

# EXHIBIT 1

**EXHIBIT 1**

**STATEMENT OF ADMITTED FACTS**

1. Bridgestone Sports Co., Ltd. (“Bridgestone Sports”) is a Japanese corporation organized and existing under the laws of Japan, with a principal place of business in Tokyo, Japan.

2. Bridgestone Golf, Inc. is a U.S. subsidiary of Bridgestone Sports Co., Ltd. and located in and has a principal place of business in Covington, Georgia.

3. Acushnet Company (“Acushnet”) is a corporation organized and existing under the laws of Delaware, with a principal place of business at 333 Bridge Street, Fairhaven, Massachusetts 02719.

4. The following facts are admitted with respect to U.S. Patent No. 5,553,852 (“the ‘852 patent”), entitled *Three-Piece Solid Golf Ball*:

- a. the ‘852 patent was issued by the U.S. Patent and Trademark Office (“USPTO”) on September 10, 1996;
- b. the ‘852 patent was filed in the USPTO on July 8, 1994
- c. the ‘852 patent claims priority to JP 5-193065, which was filed in the Japanese Patent Office (“JPO”) on July 8, 1993, and the ‘852 patent is entitled to this priority date; and
- d. the ‘852 patent is assigned to Bridgestone Sports Co., Ltd. and it owns all right, title and interest in the ‘852 patent.

5. The following facts are admitted with respect to U.S. Patent No. 5,782,707 (“the ‘707 patent”), entitled *Three-Piece Solid Golf Ball*:

- a. the ‘707 patent was issued by the USPTO on July 21, 1998;
- b. the ‘707 patent was filed in the USPTO on March 10, 1997;
- c. the ‘707 patent claims priority to JP 8-082121, which was filed in the JPO on March 11, 1996, and the ‘707 patent is entitled to this priority date; and

- d. the '707 patent is assigned to Bridgestone Sports Co., Ltd. and it owns all right, title and interest in the '707 patent.

6. The following facts are admitted with respect to U.S. Patent No. 6,679,791 ("the '791 patent"), entitled *Golf Ball*:

- a. the '791 patent was issued by the USPTO on January 20, 2004;
- b. the '791 patent was filed in the USPTO on January 15, 2001;
- c. the '791 patent claims priority to JP 2000-190640, which was filed in the JPO on June 26, 2000, and the '791 patent is entitled to this priority date; and
- d. the '791 patent is assigned to Bridgestone Sports Co., Ltd. and it owns all right, title and interest in the '791 patent.

7. The following facts are admitted with respect to U.S. Patent No. 5,252,652 ("the '652 patent"), entitled *Solid Golf Ball*:

- a. the '652 patent was issued by the USPTO on October 12, 1993;
- b. the '652 patent was filed in the USPTO on May 10, 1990;
- c. the '652 patent claims priority to JP 1-118460, which was filed in the JPO on May 11, 1989; and
- d. the '652 patent is assigned to Bridgestone Sports Co., Ltd. and it owns all right, title and interest in the '652 patent.

8. The following facts are admitted with respect to U.S. Patent No. 6,634,961 ("the '961 patent"), entitled *Multi-Piece Solid Golf Ball*:

- a. the '961 patent was issued by the USPTO on October 21, 2003;
- b. the '961 patent was filed in the USPTO on May 30, 2002;
- c. the '961 patent claims priority to JP 2001-163238, which was filed in the JPO on May 30, 2001, and the '961 patent is entitled to this priority date; and
- d. the '961 patent is assigned to Bridgestone Sports Co., Ltd. and it owns all right, title and interest in the '961 patent.

9. The following facts are admitted with respect to U.S. Patent No. 5,743,817 ("the

‘817 patent”), entitled *Golf Ball*:

- a. the ‘817 patent was issued by the USPTO on April 28, 1998;
- b. the ‘817 patent was filed in the USPTO on September 29, 1995;
- c. the ‘817 patent claims priority to JP 6-276109, which was filed in the JPO on October 14, 1994, and to JP 6-333024, which was filed in the JPO on December 14, 1994, and the ‘817 patent is entitled to these priority dates; and
- d. the ‘817 patent is assigned to Bridgestone Sports Co., Ltd. and it owns all right, title and interest in the ‘817 patent.

10. The following facts are admitted with respect to U.S. Patent No. 5,803,834 (“the ‘834 patent”), entitled *Two-Piece Solid Golf Ball*:

- a. the ‘834 patent was issued by the USPTO on September 8, 1998;
- b. the ‘834 patent was filed in the USPTO on February 27, 1997;
- c. the ‘834 patent claims priority to JP 8-071135, which was filed in the JPO on March 1, 1996, and the ‘834 patent is entitled to this priority date; and
- d. the ‘834 patent is assigned to Bridgestone Sports Co., Ltd. and it owns all right, title and interest in the ‘834 patent.

11. Those facts admitted in Acushnet’s responses to Bridgestone’s requests for admission.

12. The following facts are admitted with respect to U.S. Patent No. 6,818,705 (“the ‘705 patent”):

- a. Acushnet is the assignee of the ‘705 patent and owns all right, title and interest in the ‘705 patent;
- b. The ‘705 patent issued on November 16, 2004;
- c. The applicants of the ‘705 patent claimed priority to a provisional application filed on December 24, 1998; and
- d. Shenshen Wu, Edmund A. Hebert, Laurent Bissonnette, David A. Bulpett, Murali Rajagopalan, Peter Voorheis, Mark Wrigley are the named inventors of the technology claimed in the ‘705 patent.

13. The following facts are admitted with respect to U.S. Patent No. 4,729,861 (“the ‘861 patent”):

- a. Acushnet is the assignee of the ‘861 patent and owns all right, title and interest in the ‘861 patent;
- b. The ‘861 patent issued on March 8, 1988;
- c. The applicants of the ‘861 patent claimed priority to an application dated March 20, 1972 and the ‘861 patent is entitled to that priority date; and
- d. Francis deS. Lynch, John W. Jepson, Robert A. Brown are the named inventors of the technology claimed in the ‘861 patent.

14. The following facts are admitted with respect to U.S. Patent No. 4,936,587 (“the ‘587 patent”):

- a. Acushnet is the assignee of the ‘587 patent and owns all right, title and interest in the ‘861 patent;
- b. The ‘587 patent issued on June 26, 1990;
- c. The applicants of the ‘587 patent claimed priority to an application dated March 20, 1972 and the ‘587 patent is entitled to that priority date; and
- d. Francis deS. Lynch, John W. Jepson, Robert A. Brown are the named inventors of the technology claimed in the ‘587 patent.

15. The following facts are admitted with respect to U.S. Patent No. 5,080,367 (“the ‘367 patent”):

- a. Acushnet is the assignee of the ‘367 patent and owns all right, title and interest in the ‘861 patent;
- b. The ‘367 patent issued on January 14, 1992;
- c. The applicants of the ‘367 patent claimed priority to an application dated March 20, 1972 and the ‘367 patent is entitled to that priority date; and
- d. Francis deS. Lynch, John W. Jepson, Robert A. Brown are the named inventors of the technology claimed in the ‘367 patent.

# EXHIBIT 2

**EXHIBIT 2****BRIDGESTONE'S STATEMENT OF THE ISSUES OF FACT THAT REMAIN TO BE LITIGATED**

Bridgestone contends that the issues of fact that remain to be litigated at trial are as follows. To the extent that any issues of law set forth in Exhibit 4 of the Proposed Joint Pre-Trial Order may be considered issues of fact, Bridgestone incorporates them by reference. To the extent any of the issues of fact set forth in this Exhibit 2 may be considered issues of law, Bridgestone incorporates them by reference also.

**I. BRIDGESTONE'S PATENTS****A. Infringement<sup>1</sup>**

1. Whether Bridgestone has shown by a preponderance of the evidence that:

(i) the accused Acushnet golf balls (the ◀•Pro V1 392•▶; ▶Pro V1-392▶; ▶Pro V1\* 392▶; ▶Pro V1x 332•▶; ▶Pro V1x-332▶; ▶NXT▶; ▶-NXT -▶; ▶NXT Tour▶; ▶NXT-Tour▶; DT So/Lo/PTS So/Lo; ▶DT So/Lo▶ / ▶PTS So/Lo▶; Exception; and Exception airfoil logo) infringe any of the asserted claims 1 and 9 of Bridgestone's '652 Patent; and (ii) the accused Acushnet golf balls (the ▶Pro V1 392•▶; ▶Pro V1-392▶; ▶Pro V1\* 392▶; ▶Pro V1x 332•▶; ▶Pro V1x-332▶) infringe asserted claim 5 of Bridgestone's '652 Patent.

2. Whether Bridgestone has shown by a preponderance of the evidence that the accused Acushnet golf balls (the Pro V1 392; Pro V1 392 (stretched); ▶Pro V1•392▶; ▶Pro V1 392•▶; ▶Pro V1-392▶; ▶Pro V1\* 392▶; ▶Pro V1x 332•▶; and ▶Pro V1x-332▶) infringe any of the asserted claims 1, 6 and 7 of Bridgestone's '852 Patent.

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<sup>1</sup> Because the Court has stayed discovery and trial on willfulness (D.I. 158, Aug. 2, 2006 Tr. at 23), Bridgestone does not include any willfulness issues in this pretrial order.

3. Whether Bridgestone has shown by a preponderance of the evidence that the accused Acushnet golf balls (the ◀NXT•Tour▶; ◀NXT Tour▶; ◀NXT-Tour▶; DT So/Lo/PTS So/Lo; ◀DT So/Lo▶/◀PTS So/Lo▶; Exception; and Exception airfoil logo) infringe asserted claim 1 of Bridgestone's '817 Patent.

4. Whether Bridgestone has shown by a preponderance of the evidence that the accused Acushnet golf balls (the Pro V1 392; Pro V1 392 (stretched); and ◀Pro V1•392▶) infringe asserted claim 1 of Bridgestone's '707 Patent.

5. Whether Bridgestone has shown by a preponderance of the evidence that the accused Acushnet golf balls (the ◀NXT▶; ◀-NXT -▶; ◀DT So/Lo▶/◀PTS So/Lo▶; Exception; and Exception airfoil logo) infringe asserted claim 1 of Bridgestone's '834 Patent.

6. Whether Bridgestone has shown by a preponderance of the evidence that the accused Acushnet golf ball (the ◀Pro V1-392▶) infringes asserted claim 2 of Bridgestone's '961 Patent.

7. Whether Bridgestone has shown by a preponderance of the evidence that the accused Acushnet golf balls (the ◀•Pro V1 392•▶; ◀Pro V1-392▶; ◀•Pro V1x 332•▶; and ◀Pro V1x-332▶) infringe any of the asserted claims 11, 13, 16 and 26 of Bridgestone's '791 Patent.

B. Damages

1. Whether Bridgestone is entitled to reasonable royalty damages, and, if so, what amount it has proven by a preponderance of the evidence.

2. The amount of prejudgment interest to which Bridgestone is entitled on the damages award.

3. Whether Bridgestone should be awarded its reasonable attorneys' fees,



expenses, and costs due to this case being exceptional under 35 U.S.C. § 285.

4. The nature and scope of the injunction to which Bridgestone is entitled.<sup>2</sup>

C. Validity

1. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (Japanese Publication No. 02-092378; United States Patent No. 4,556,220; “Mastication of Rubber;” and United States Patent No. 4,722,977) qualifies as prior art to any of the asserted claims 1, 5 and 9 of Bridgestone’s ‘652 Patent.

2. Whether Acushnet has proven by clear and convincing evidence that Japanese Publication No. 02-092378 discloses all of the elements of any of the asserted claims 1, 5 and 9 of Bridgestone’s ‘652 Patent.

3. Whether Acushnet has proven by clear and convincing evidence that the inventions of the asserted claims 1, 5 and 9 of Bridgestone’s ‘652 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (Japanese Publication No. 02-092378), the differences between each asserted claim of the patents-in-suit and the prior art, the level or ordinary skill in the art at that time, and objective indicia of non-obviousness.

4. Whether Acushnet has proven by clear and convincing evidence that the inventions of the asserted claims 1, 5 and 9 of Bridgestone’s ‘652 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (a combination of United States Patent No. 4,556,220, “Mastication of Rubber” and United States Patent No. 4,722,977), the differences

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<sup>2</sup> The amount of prejudgment interest and injunctive relief are issues for the Court.

between each asserted claim of the patents-in-suit and the prior art, the level or ordinary skill in the art at that time, and objective indicia of non-obviousness.

5. Whether Acushnet has proven by clear and convincing evidence that the inventions of the asserted claims 1, 5 and 9 of Bridgestone's '652 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (a combination of Japanese Publication No. 02-092378 and United States Patent No. 4,556,220), the differences between each asserted claim of the patents-in-suit and the prior art, the level or ordinary skill in the art at that time, and objective indicia of non-obviousness.

6. Whether Bridgestone has shown evidence of secondary considerations to show non-obviousness of any of the asserted claims 1, 5 and 9 of Bridgestone's '652 Patent.

7. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (Japanese Publication No. 02-092378) enables one of ordinary skill in the art to make and use any of the asserted claims 1, 5 and 9 of Bridgestone's '652 Patent without undue experimentation.

8. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (a combination of United States Patent No. 4,556,220, "Mastication of Rubber" and United States Patent No. 4,722,977) enables one of ordinary skill in the art to make and use any of the asserted claims 1, 5 and 9 of Bridgestone's '652 Patent without undue experimentation.

9. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (a combination of Japanese Publication No. 02-092378 and United States Patent No. 4,556,220) enables one of ordinary skill in the art to make and use any of the asserted claims 1, 5 and 9 of Bridgestone's '652 Patent without undue experimentation.

10. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (United States Patent No. 4,431,193; United States Patent No. 5,314,187; and twelve “Wilson Ultra Tour Balata 90” golf balls) qualifies as prior art to any of the asserted claims 1, 6 and 7 of Bridgestone’s ‘852 Patent.

11. Whether Acushnet has proven by clear and convincing evidence that United States Patent No. 4,431,193 discloses all of the elements of any of the asserted claims 1, 6 and 7 of Bridgestone’s ‘852 Patent.

12. Whether Acushnet has proven by clear and convincing evidence that the inventions of the asserted claims 1, 6 and 7 of Bridgestone’s ‘852 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (United States Patent No. 4,431,193), the differences between each asserted claim of the patents-in-suit and the prior art, the level or ordinary skill in the art at that time, and objective indicia of non-obviousness.

13. Whether Acushnet has proven by clear and convincing evidence that the inventions described and claimed in any of the asserted claims 1, 6 and 7 of Bridgestone’s ‘852 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (a combination of United States Patent No. 5,314,187 and the twelve “Wilson Ultra Tour Balata 90” balls), the differences between each asserted claim of the patents-in-suit and the prior art, the level or ordinary skill in the art at that time, and objective indicia of non-obviousness.

14. Whether Bridgestone has shown evidence of secondary considerations to show non-obviousness of the asserted claims 1, 6 and 7 of Bridgestone’s ‘852 Patent.

15. Whether Acushnet has proven by clear and convincing evidence that its

alleged prior art (United States Patent No. 4,431,193) enables one of ordinary skill in the art to make and use any of the asserted claims 1, 6 and 7 of Bridgestone's '852 Patent without undue experimentation.

16. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (United States Patent No. 5,314,187 and the twelve "Wilson Ultra Tour Balata 90" balls) enables one of ordinary skill in the art to make and use any of the asserted claims 1, 6 and 7 of Bridgestone's '852 Patent without undue experimentation.

17. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (Japanese Publication No. 60-163673) qualifies as prior art to asserted claim 1 of Bridgestone's '817 Patent.

18. Whether Acushnet has proven by clear and convincing evidence that Japanese Publication No. 60-163673 discloses all of the elements of asserted claim 1 of Bridgestone's '817 Patent.

19. Whether Acushnet has proven by clear and convincing evidence that the invention of asserted claim 1 of Bridgestone's '817 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (Japanese Publication No. 60-163673), the differences between each asserted claim of the patents-in-suit and the prior art, the level of ordinary skill in the art at that time, and objective indicia of non-obviousness.

20. Whether Bridgestone has shown evidence of secondary considerations to show non-obviousness of asserted claim 1 of Bridgestone's '817 Patent.

21. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (Japanese Publication No. 60-163673) enables one of ordinary skill in the art to

make and use asserted claim 1 of Bridgestone's '817 Patent without undue experimentation.

22. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (European Publication No. 0 633 043) qualifies as prior art to asserted claim 1 of Bridgestone's '707 Patent.

23. Whether Acushnet has proven by clear and convincing evidence that the invention of asserted claim 1 of Bridgestone's '707 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (European Publication No. 0 633 043), the differences between each asserted claim of the patents-in-suit and the prior art, the level or ordinary skill in the art at that time, and objective indicia of non-obviousness.

24. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (European Publication No. 0 633 043) enables one of ordinary skill in the art to make and use asserted claim 1 of Bridgestone's '707 Patent without undue experimentation.

25. Whether Bridgestone has shown evidence of secondary considerations to show non-obviousness of asserted claim 1 of Bridgestone's '707 Patent.

26. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (six "Precept EV Extra Spin" golf balls; and six "Wilson Ultra Competition" golf balls) qualifies as prior art to asserted claim 1 of Bridgestone's '834 Patent.

27. Whether Acushnet has proven by clear and convincing evidence that the "Precept EV Extra Spin" discloses all of the elements of asserted claim 1 of Bridgestone's '834 Patent.

28. Whether Acushnet has proven by clear and convincing evidence that the "Wilson Ultra Competition" discloses all of the elements of asserted claim 1 of Bridgestone's

‘834 Patent.

29. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (“Precept EV Extra Spin”) enables one of ordinary skill in the art to make and use asserted claim 1 of Bridgestone’s ‘834 Patent without undue experimentation.

30. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (“Wilson Ultra Competition”) enables one of ordinary skill in the art to make and use asserted claim 1 of Bridgestone’s ‘834 Patent without undue experimentation.

31. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (United States Patent No. 6,612,940 and United States Patent No. 6,486,261) qualifies as prior art to asserted claim 2 of Bridgestone’s ‘961 Patent.

32. Whether Acushnet has proven by clear and convincing evidence that United States Patent No. 6,612,940 discloses all of the elements of asserted claim 2 of Bridgestone’s ‘961 Patent.

33. Whether Acushnet has proven by clear and convincing evidence that the invention of asserted claim 2 of Bridgestone’s ‘961 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (United States Patent No. 6,612,940), the differences between each asserted claim of the patents-in-suit and the prior art, the level of ordinary skill in the art at that time, and objective indicia of non-obviousness.

34. Whether Acushnet has proven by clear and convincing evidence that the invention of asserted claim 2 of Bridgestone’s ‘961 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (United States Patent No. 6,486,261), the differences between each

asserted claim of the patents-in-suit and the prior art, the level or ordinary skill in the art at that time, and objective indicia of non-obviousness.

35. Whether Acushnet has proven by clear and convincing evidence that the invention of asserted claim 2 of Bridgestone's '961 Patent would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made, in light of the scope and content of the prior art (a combination of United States Patent No. 6,612,940 and United States Patent No. 6,486,261), the differences between each asserted claim of the patents-in-suit and the prior art, the level or ordinary skill in the art at that time, and objective indicia of non-obviousness.

36. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (United States Patent No. 6,612,940) enables one of ordinary skill in the art to make and use asserted claim 2 of Bridgestone's '961 Patent without undue experimentation.

37. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (United States Patent No. 6,486,261) enables one of ordinary skill in the art to make and use asserted claim 2 of Bridgestone's '961 Patent without undue experimentation.

38. Whether Acushnet has proven by clear and convincing evidence that its alleged prior art (a combination of United States Patent No. 6,612,940 and United States Patent No. 6,486,261) enables one of ordinary skill in the art to make and use asserted claim 2 of Bridgestone's '961 Patent without undue experimentation.

39. Whether Bridgestone has shown evidence of secondary considerations to show non-obviousness of asserted claim 2 of Bridgestone's '961 Patent.

40. Whether Acushnet has proven by clear and convincing evidence that any of the asserted claims 11, 13, 16 and 26 of Bridgestone's '791 Patent are not supported by a

written description such that one of ordinary skill in the art would understand that the inventor had possession of the claimed invention.

41. Whether Acushnet has proven by clear and convincing evidence that Bridgestone's '791 Patent does not enable one of ordinary skill in the art to make and use any of its asserted claims 11, 13, 16 and 26 without undue experimentation.

D. Unenforceability<sup>3</sup>

1. Whether Acushnet has proven by clear and convincing evidence that Bridgestone's '817 Patent is unenforceable due to inequitable conduct for not disclosing the Precept EV Extra Spin to the Patent Office.

2. Whether Acushnet has proven by clear and convincing evidence that Bridgestone's '707 Patent is unenforceable due to inequitable conduct for not disclosing European Publication 0 633 043 to the Patent Office.

E. Unclean Hands

1. Whether Acushnet has proven by clear and convincing evidence that Bridgestone is acting with unclean hands in asserting the '817 Patent due to inequitable conduct for not disclosing the Precept EV Extra Spin to the Patent Office.

2. Whether Acushnet has proven by clear and convincing evidence that Bridgestone is acting with unclean hands in asserting the '707 Patent due to inequitable conduct for not disclosing the European Publication 0 633 043 to the Patent Office.

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<sup>3</sup> Unenforceability, Unclean Hands, and Laches, Waiver and Estoppel defenses will be tried by the Court.



F. Laches, Wavier and Estoppel

1. Whether Acushnet has proven that Bridgestone has violated the doctrines of laches, waiver or estoppel with respect to asserting its '652 Patent.

2. Whether Acushnet has proven that Bridgestone has violated the doctrines of laches, waiver or estoppel with respect to asserting its '817 Patent.

3. Whether Acushnet has proven that Bridgestone has violated the doctrines of laches, waiver or estoppel with respect to asserting its '852 Patent.

4. Whether Acushnet has proven that Bridgestone has violated the doctrines of laches, waiver or estoppel with respect to asserting its '707 Patent.

5. Whether Acushnet has proven that Bridgestone has violated the doctrines of laches, waiver or estoppel with respect to asserting its '834 Patent.

G. Notice

1. Whether Bridgestone has proven by a preponderance of the evidence that it is entitled to recover damages from Acushnet for infringement of the '652 Patent as of at least June 2001.

2. Whether Bridgestone has proven by a preponderance of the evidence that it is entitled to recover damages from Acushnet for infringement of the '817 Patent as of at least June 2001.

3. Whether Bridgestone has proven by a preponderance of the evidence that it is entitled to recover damages from Acushnet for infringement of the '852 Patent as of at least July 2000.

4. Whether Bridgestone has proven by a preponderance of the evidence that it is entitled to recover damages from Acushnet for infringement of the '707 Patent as of at least July 2000.

5. Whether Bridgestone has proven by a preponderance of the evidence that it is entitled to recover damages from Acushnet for infringement of the '834 Patent as of at least September 2002.

6. Whether Bridgestone has proven by a preponderance of the evidence that it is entitled to recover damages from Acushnet for infringement of the '961 Patent as of at least November 2004.

7. Whether Bridgestone has proven by a preponderance of the evidence that it is entitled to recover damages from Acushnet for infringement of the '791 Patent as of at least January 2004.

# EXHIBIT 3

**EXHIBIT 3**

**ACUSHNET'S STATEMENT OF ISSUES OF FACT**

Acushnet expects that it will present the listed issues of fact at trial. Further details of these proofs have been explained at length in Acushnet's interrogatory responses, expert reports and by the experts and fact witnesses in their depositions.

To the extent that any issues of law set forth in Exhibit 5 may be considered issues of fact, Acushnet incorporates these portions of Exhibit 5 by reference. These issues of fact may change based on the Court's decisions on the pending summary judgment motions and motions in limine currently before the court.

**I. BRIDGESTONE PATENTS**

**A. U.S. Patent No. 5,252,652**

1. Whether the Asserted Claims of the '652 patent are invalid.
2. Whether Bridgestone has proven by a preponderance of the evidence how many or that any of the following golf balls bearing the sidestamps: ◀●Pro V1 392●▶; ◀Pro V1-392▶; ◀●Pro V1x 332●▶; ◀Pro V1x-332▶; ◀Pro V1\* 392▶; ◀NXT▶; ◀-NXT-▶; ◀NXT●Tour▶; ◀NXT Tour▶; ◀NXT-Tour▶; ◀DT So/Lo▶; DT So/Lo; ◀PTS So/Lo▶; PTS So/Lo; Exception; Exception airfoil logo infringe claims 1, 5 and/or 9 of the '652 patent.
3. Whether Bridgestone added new matter during the prosecution of the '652 patent.
4. Whether the '652 patent is entitled to rely on its Japanese foreign filing date for priority purposes.

**B. U.S. Patent No. 5,553,852**

1. Whether the Asserted Claims of the '852 patent are invalid because they are anticipated under 35 U.S.C. §102.

2. Whether Bridgestone has proven by a preponderance of the evidence how many or that any of the golf balls bearing the following sidestamps: Pro V1 392; Pro V1 392 (stretched); ◀Pro V1●392▶; ◀●Pro V1 392●▶; ◀Pro V1-392▶; ◀●Pro V1x 332●▶; ◀Pro V1x-332▶; ◀Pro V1\* 392▶ infringe claims 1, 6 and/or 7 of the '852 patent.

**C. U.S. Patent No. 6,634,961**

1. Whether the Asserted Claims of the '961 patent are invalid.

2. Whether Bridgestone has proven by a preponderance of the evidence how many or that any of the golf balls bearing the following sidestamps: ◀Pro V1-392▶ infringes claim 2 of the '961 patent.

**D. U.S. Patent No. 5,743,817**

1. Whether Acushnet has demonstrated that the '817 patent is invalid.

2. Whether Bridgestone has proven by a preponderance of the evidence how many or that any of the golf balls bearing the following sidestamps: ◀NXT●Tour▶; ◀NXT Tour▶; ◀NXT-Tour▶; ◀DT So/Lo▶; DT So/Lo; “◀PTS So/Lo▶; PTS So/Lo; Exception airfoil logo, Exception infringe claim 1 of the '817 patent.

**E. U.S. Patent No. 5,782,707**

1. Whether claim 1 of the '707 patent is invalid.

2. Whether Bridgestone has proven by a preponderance of the evidence how many or that any of the golf balls bearing the following sidestamps: Pro V1 392; Pro V1 392 (stretched); ◀Pro V1●392 ▶ infringe claim 1 of the '707 patent.

**F. U.S. Patent No. 5,803,834**

1. Whether claim 1 of the '834 patent is invalid.

2. Whether Bridgestone has proven by a preponderance of the evidence how many or that any of the following golf balls bearing the sidestamps: ◀NXT▶; ◀-NXT-▶;

◀DT So/Lo▶; DT So/Lo; ◀PTS So/Lo▶; PTS So/Lo; Exception; Exception airfoil logo infringe claim 1 of the '834 patent.

**G. U.S. Patent No. 6,679,791**

1. Whether claims 11, 13, 16, and 26 of the '791 patent are invalid.
2. Whether Bridgestone has proven by a preponderance of the evidence how many or that any of the following golf balls bearing the sidestamps: ◀●Pro V1 392●▶; ◀Pro V1-392▶; ◀●Pro V1x 332●▶; ◀Pro V1x-332▶ infringe claims 11, 13, 16 and 26 of the '791 patent.

**H. Laches**

1. Whether Bridgestone delayed filing suit for an unreasonable and inexcusable length of time and its delay operated to the prejudice and/or injury of Acushnet.

**I. Damages**

1. If Bridgestone has proven that Acushnet infringes any valid and enforceable claim of the patents-in-suit, what is the appropriate amount of damages.

**II. ACUSHNET PATENTS**

**A. U. S. Patent No. 6,818,705**

1. Whether Acushnet has shown by a preponderance of the evidence that the Bridgestone Tour B330, Precept U-Tri Extra Distance, Precept U-Tri Extra Spin, Nike One Black, Nike One Platinum, Nike One Gold, Nike One TW golf balls infringe claim 4 of the '705 patent.
2. Whether Bridgestone has shown by clear and convincing evidence that the '705 patent is invalid.

**B. U.S. Patent Nos. 4,729,861; 4,936,587; 5,080,367 (“the Lynch patents”)**

1. Whether Acushnet has shown by a preponderance of the evidence that the Precept U-Tri Tour, the Bridgestone Tour B330 and the Precept Laddie golf balls infringe claim 1 of the Lynch patents.
2. Whether Bridgestone has shown by clear and convincing evidence that the Lynch patents are invalid.

**C. Damages**

1. If Acushnet has proven that Bridgestone infringes any valid and enforceable claim of the patents-in-suit, what is the appropriate amount of damages.

# EXHIBIT 4



**EXHIBIT 4**

PLAINTIFFS' STATEMENT OF ISSUES OF LAW

***ISSUES ON WHICH PLAINTIFFS BEAR THE BURDEN OF PROOF***

INFRINGEMENT<sup>1</sup>

35 U.S.C. § 271(a) states:

Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

“The patent document [] grants the patentee a right to exclude others. . . . The Supreme Court has likened patent claims to the description of real property in a deed which sets the bounds to the grant which it contains.” *General Foods Corp. v. Studiengesellschaft Kohle*, 972 F.2d 1272, 1273 (Fed. Cir. 1992) (citation omitted). “With respect to . . . infringement . . . the claims define the patent owner’s property rights whereas infringement is the act of trespassing upon those rights.” *Hoechst-Roussel Pharms. Inc. v. Lehman*, 109 F.3d 756, 759 (Fed. Cir. 1997).

“A patent is infringed if any claim is infringed . . . for each claim is a separate statement of the patented invention.” *Pall Corp. v. Micron Separations Inc.*, 66 F.3d 1211, 1220 (Fed. Cir. 1995), *cert. denied*, 520 U.S. 1115 (1997).

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<sup>1</sup> Because the Court has stayed discovery and trial on willfulness, Bridgestone does not include any willfulness issues in this pretrial order.

“Determination of infringement, whether literal or under the doctrine of equivalents, is a question of fact.” *Hilgraeve Corp. v. Symantec Corp.*, 265 F.3d 1336, 1341 (Fed. Cir. 2001) (citing *Bai v. L&L Wings, Inc.*, 160 F.3d 1350, 1353 (Fed. Cir. 1998)). “Infringement requires proof by a preponderance of the evidence.” *Seal-Flex Inc. v. Athletic Track & Court Constr.*, 172 F.3d 836, 842 (Fed. Cir. 1999). “To show infringement of a patent, a patentee must supply sufficient evidence to prove that the accused product or process contains, either literally or under the doctrine of equivalents, every limitation of the properly construed claim.” *Id.*

### **Literal Infringement**

“A patent infringement analysis requires two steps. First, the claim must be properly construed to determine its scope and meaning. Second, the claim as properly construed must be compared to the accused device or process.” *Hilgraeve Corp.*, 265 F.3d at 1341 (citing *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 1476 (Fed. Cir. 1998)).

#### **Claim Construction**

The first step of the infringement analysis, claim construction, is a question of law. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1451, 1454 (Fed. Cir. 1998) (*en banc*). When construing a claim, its words “are generally given their ordinary and customary meaning” – “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005). The person of ordinary skill in the art is deemed to read the claim term in the context of the entire patent, including the specification. *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998).

The parties disagree as to the meaning of some of the terms in the patents-in-suit. The Court held a *Markman* hearing on November 29, 2006 with respect to these terms, but has not yet issued a claim construction.

#### Comparing the Properly Construed Claims to the Accused Product

“After claim construction, the next step in an infringement analysis is comparing the properly construed claims with the allegedly infringing devices. This comparison is a question of fact.” *Ecolab, Inc. v. Envirochem, Inc.*, 264 F.3d 1358, 1364 (Fed. Cir. 2001).

“Infringement . . . is determined by comparing an accused product not with a preferred embodiment described in the specifications . . . but with the properly and previously construed claims in suit.” *SRI Int’l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985). “[C]laims are infringed, not specifications.” *Id.* “[L]imitations cannot be read into the claims from the specification or the prosecution history.” *Burke*, 183 F.3d at 1340. The Federal Circuit “has consistently adhered to the proposition that courts cannot alter what the patentee has chosen to claim as his invention, that limitations appearing in the specification will not be read into the claims, and that interpreting what is meant by a word in a claim is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.” *Id.* (quoting *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed. Cir. 1989) (citations omitted)). *See also Renishaw PLC v. Marposs Societa’ Per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998).

“An accused device cannot escape infringement by merely adding features, if it otherwise has adopted the basic features of the patent.” *Amstar Corp. v. Envirotech Corp.*, 730 F.2d 1476, 1482 (Fed. Cir. 1984) (citation omitted). Likewise, an accused method “does not

avoid literally infringing a method claim . . . simply because it employs additional steps.” *Dow Chem. Co. v. Sumitomo Chem. Co.*, 257 F.3d 1364, 1380 (Fed. Cir. 2001) (quoting *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1271 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1030 (1987)).

Many of the asserted claims use the phrase “comprising” or “comprises,” which is open-ended. *See Genentech Inc. v. Chiron Corp.*, 112 F.3d 495, 501 (Fed. Cir. 1997) (“‘Comprising’ is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.”).

### **Infringement Under the Doctrine of Equivalents**

As the Supreme Court has stated:

The language in the patent claims may not capture every nuance of the invention or describe with complete precision the range of its novelty. If patents were always interpreted by their literal terms, their value would be greatly diminished. Unimportant and insubstantial substitutes for certain elements could defeat the patent, and its value to inventors could be destroyed by simple acts of copying.”)

*Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 731 (2002). Accordingly, “[t]he scope of a patent is not limited to its literal terms but instead embraces all equivalents to the claims described.” *Id.* *See also Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 21 (1997) (“[A] product or process that does not literally infringe upon the express terms of a patent claim may nonetheless be found to infringe if there is ‘equivalence’ between the elements of the accused product or process and the claimed elements of the patented invention.”).

Technology developed after the date of invention is “the ‘quintessential example of an enforceable equivalent.’” *Varco, L.P. v. Pason Systems USA Corp.*, 436 F.3d 1368, 1376 (Fed. Cir. 2006) (quoting *Smithkline Beecham Corp. v. Excel Pharm., Inc.*, 356 F.3d 1357, 1364 (Fed. Cir. 2004)). Generally, “[t]he law does not require the impossible. Hence, it does not require that an applicant describe in his specification every conceivable and possible future embodiment of his invention.” *SRI Int’l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (*en banc*).

“[T]here is no basis for treating an infringing equivalent any differently than a device that infringes the express terms of the patent. Application of the doctrine of equivalents, therefore, is akin to determining literal infringement, and neither requires proof of intent.” *Warner-Jenkinson*, 520 U.S. at 35. “Infringement under the doctrine of equivalents is an equitable doctrine devised for ‘situations where there is no literal infringement but [where] liability is nevertheless appropriate to prevent what is in essence a pirating of the patentee’s invention.’” *Insta-Foam Prods. Inc. v. Universal Foam Sys. Inc.*, 906 F.2d 698, 702 (Fed. Cir. 1990) (quoting *Loctite Corp. v. Ultraseal Ltd.*, 781 F.2d 861, 870 (Fed. Cir. 1985)). “The doctrine of equivalents is an equitable doctrine designed to prevent parties from realizing the benefits of another’s patent by designing around the patent’s literal language.” *BOC Health Care, Inc. v. Nellcor Inc.*, 892 F. Supp. 598, 604 (D. Del. 1995). “Infringement under the doctrine of equivalents may be found where those limitations of a claim not found exactly in the accused device are met equivalently.” *Zygo Corp. v. Wyko Corp.*, 79 F.3d 1563, 1568 (Fed. Cir. 1996).

The “essential inquiry” in determining infringement under the doctrine of equivalents is: “Does the accused product or process contain elements identical or equivalent to

each claimed element of the patented invention?” *Warner-Jenkinson*, 520 U.S. at 40. The doctrine of equivalents requires an element-by-element comparison of the accused method or product and the claim. *Id.* One test for whether a step of an accused method is equivalent to a claim element is whether that step performs substantially the same function in substantially the same way, to obtain substantially the same result. *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 608 (1950); *see also Abraxis Bioscience, Inc. v. Mayne Pharma (USA), Inc.*, 467 F.3d 1370, 1379 (Fed. Cir. 2006).

“Each element contained in a patent claim is deemed material to defining the scope of the patented invention, and thus the doctrine of equivalents must be applied to individual elements of the claim, not to the invention as a whole.” *Depuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1016-17 (Fed. Cir. 2006) (quoting *Warner-Jenkinson*, 520 U.S. at 29). In applying the “all elements rule” to determine infringement under the doctrine of equivalents, it is appropriate to identify “the role played by each element in the context of the specific patent claim.” *Warner-Jenkinson*, 520 U.S. at 40. “This analysis . . . will thus inform the inquiry as to whether a substitute element matches the function, way, and result of the claimed element, or whether the substitute element plays a role substantially different from the claimed element.” *Id.*

The accused method must contain every claim element, but “not necessarily in a corresponding component.” *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1259 (Fed. Cir. 1989). “A patentee is, for example, free to frame the issue of equivalency, if it chooses, as equivalency to a combination of limitations.” *Id.* at 1259 n. 6 (citation omitted). Courts have held that “[o]ne-to-one correspondence of components is not required, and elements or steps may be combined without ipso facto loss of equivalency.” *Ethicon Endo-*

*Surgery Inc. v. U.S. Surgical Corp.*, 149 F.3d 1309, 1320 (Fed. Cir. 1998) (quoting *Sun Studs, Inc. v. ATA Equip. Leasing Inc.*, 872 F.2d 978, 989 (Fed. Cir. 1989), *overruled on other grounds*, *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020 (Fed. Cir. 1992)). A finding of infringement under the doctrine of equivalents is permissible unless “no reasonable jury could conclude that an element of an accused device is equivalent to an element called for in the claim, or that the theory of equivalence to support the conclusion of infringement otherwise lacks legal sufficiency.” *Depuy Spine*, 469 F.3d at 1018-19 (reversing for legal error District Court’s holding precluding application of doctrine of equivalents as a matter of law).

## REMEDIES

### **Injunction**

Under § 283, “[t]he several courts having jurisdiction of cases under th[e] patent title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.” 35 U.S.C. § 283 (2006). “[T]he decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity. . . .” *eBay, Inc. v. MercExchange, L.L.C.*, 126 S. Ct. 1837, 1841 (2006). Further, “the Patent Act also declares that ‘patents shall have the attributes of personal property,’ § 261, including ‘the right to exclude others from making, using, offering for sale, or selling the invention,’ § 154(a)(1).” *Id.* at 1840.

According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. “A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the

balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Id.* at 1839.

In one recent case, when applying the four-factor test in a case in which the infringer competed directly with the patent holder, the court observed:

Justice Kennedy [concurring in *eBay*] recognized that “[t]o the extent earlier cases establish a pattern of granting an injunction against patent infringers almost as a matter of course, this pattern simply illustrates the result of the four-factor test in the contexts then prevalent.” . . . Since a patent grants the right to exclude others from practicing the invention . . . the right to exclude remains a relevant issue for courts to consider when weighing the equities for and against an application for permanent injunction. Although GSF argues that it is not using Transocean's invention to influence common customers, GSF admits that “Transocean and GlobalSantaFe have the same customers in the deepwater rig market.” GSF has not cited any case in which a continuing infringer in direct competition with a patent holder has not been permanently enjoined from using the patented invention to compete against the patent holder.

*Transocean Offshore Deepwater Drilling, Inc. v. GlobalSantaFe Corp.*, No. H-03-2910, 2006 WL 3813778, \*3 (S.D. Tex., Dec. 27, 2006) (granting injunction to patentee) (citations omitted).

### **Damages**

35 U.S.C. § 284 states:

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

“The measurement of patent damages is a question of fact.” *Crystal Semiconductor Corp. v. TriTech Microelects. Int’l, Inc.*, 246 F.3d 1336, 1345 (Fed. Cir. 2001).



The patent statute “imposes no limitation on the types of harm resulting from infringement that the statute will redress. The section’s broad language awards damages for any injury as long as it resulted from the infringement.” *King Instruments Corp. v. Perego*, 65 F.3d 941, 947 (Fed. Cir. 1995), *cert. denied*, 517 U.S. 1188 (1996). “The phrase ‘damages *adequate to compensate*’ means full compensation for ‘any damages’ [the patent owner] suffered as a result of the infringement.” *Grain Processing Corp. v. American Maize-Prods. Co.*, 185 F.3d 1341, 1349 (Fed. Cir. 1999) (citing *General Motors Corp. v. Devex Corp.*, 461 U.S. 648 (1983)). A damage award shall be “in no event less than a reasonable royalty,” which sets the floor below which a damage award may not fall. *See Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538, 1544 (Fed. Cir.), *cert. denied*, 516 U.S. 867 (1995). “[T]he Supreme Court has interpreted [35 U.S.C. § 284] to mean that ‘adequate’ damages should approximate those damages that will *fully compensate* the patentee for infringement.” *Id.* at 1545.

The patent owner must prove the amount of its damages by a preponderance of the evidence. *See SmithKline Diagnostics, Inc. v. Helena Lab. Corp.*, 926 F.2d 1161, 1164 (Fed. Cir. 1991). The patentee, however, need not prove its damages with absolute certainty. *See W.R. Grace & Co.-Conn. v. InterCat, Inc.*, 60 F. Supp. 2d 316, 321 (D. Del. 1999). “[I]t will be enough if the evidence show [sic] the extent of the damages as a matter of just and reasonable inference, although the result be only approximate.” *Story v. Parchment Paper Co.*, 282 U.S. 555, 563 (1931). Moreover, “any doubt about the correctness [of damages] is resolved against the infringer.” *State Indus., Inc. v. Mor-Flo Indus., Inc.*, 883 F.2d 1573, 1576 (Fed. Cir. 1989), *cert. denied*, 493 U.S. 1022 (1990); *W.R. Grace*, 60 F. Supp. 2d at 321. “[F]undamental principles of justice require us to throw the risk of any uncertainty upon the wrongdoer instead of

upon the injured party.” *Paper Converting Machine Co. v. Magna-Graphics Corp.*, 745 F.2d 11, 22 (Fed. Cir. 1984).

#### Reasonable Royalty

“A reasonable royalty is the amount of money that would be agreed to in a hypothetical arms length negotiation between the owners of the patent rights and the infringer, with both operating under the assumption that the negotiated patent is not invalid and is infringed.” *Johns Hopkins*, 894 F. Supp. at 838. “[W]hat an infringer would prefer to pay is not the test for damages.” *Rite-Hite*, 56 F.3d at 1555. “[T]hat the parties might have agreed to a lesser royalty is of little relevance, for to look only at that question would be to pretend that the infringement never happened; it would also make an election to infringe a handy means for competitors to impose a compulsory license policy upon every patent owner.” *Id.* “There is no rule that a royalty be no higher than the infringer’s net profit margin.” *State Indus.*, 883 F.2d at 1580.

The hypothetical negotiation is presumed to take place on the eve of first infringement. *Hanson v. Alpine Valley Ski Area, Inc.*, 718 F.2d 1075, 1079 (Fed. Cir. 1983). “The Court also must assume, for purposes of the hypothetical negotiation, that all parties would have known all relevant information.” *Mobil Oil Corp. v. Amoco Chem. Co.*, 915 F. Supp. 1333, 1353 (D. Del. 1995). The hypothetical negotiation speaks of negotiations as of the time infringement began, yet a court may look to events and facts that occurred thereafter and that could not have been known to or predicted by the hypothetical negotiators. *Studiengesellschaft Kohle GmbH v. Start Indus. Inc.*, 862 F.2d 1564, 1571-72 (Fed. Cir. 1988).

In determining a reasonable royalty, courts often apply the fifteen factors first enunciated in *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970), *modified and aff'd*, 446 F.2d 295 (2d Cir.), *cert. denied*, 404 U.S. 870 (1971). *See Unisplay, S.A. v. American Elec. Sign Co.*, 69 F.3d 512, 517, n.7 (Fed. Cir. 1995) (citing to *Georgia-Pacific* factors). These factors are:

1. The royalties received by the patentee for the licensing of the patent in suit, proving or tending to prove an established royalty.
2. The rates paid by the licensee for the use of other patents comparable to the patent in suit.
3. The nature and scope of the license, as exclusive or non-exclusive; or as restricted or nonrestricted in terms of territory or with respect to whom the manufactured product may be sold.
4. The licensor's established policy and marketing program to maintain his patent monopoly by not licensing others to use the invention or by granting licenses under special conditions designed to preserve that monopoly.
5. The commercial relationship between the licensor and licensee, such as, whether they are competitors in the same territory in the same line of business; or whether they are inventor and promotor [sic].
6. The effect of selling the patented specialty in promoting sales of other products of the licensee; the existing value of the invention to the licensor as a generator of sales of his non-patented items; and the extent of such derivative or convoyed sales.
7. The duration of the patent and the term of the license.

8. The established profitability of the product made under the patent; its commercial success; and its current popularity.

9. The utility and advantages of the patent property over the old modes or devices, if any, that had been used for working out similar results.

10. The nature of the patented invention; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the invention.

11. The extent to which the infringer has made use of the invention; and any evidence probative of the value of that use.

12. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the invention or analogous inventions.

13. The portion of the realizable profit that should be credited to the invention as distinguished from non-patented elements, the manufacturing process, business risks, or significant features or improvements added by the infringer.

14. The opinion testimony of qualified experts.

15. The amount that a licensor (such as the patentee) and a licensee (such as the infringer) would have agreed upon (at the time the infringement began) if both had been reasonably and voluntarily trying to reach an agreement; that is, the amount which a prudent licensee – who desired, as a business proposition, to obtain a license to manufacture and sell a particular article embodying the patented invention – would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by a prudent patentee who was willing to grant a license.

*Georgia Pacific*, 318 F. Supp. at 1120.

### **Enhanced Damages**

35 U.S.C. § 284 states in pertinent part that “the court may increase the damages up to three times the amount found or assessed.” The Court may enhance damages, up to trebling the actual damages, upon a finding of willful infringement. *Johns Hopkins*, 152 F.3d at 1364. In exercising its discretion to enhance damages, the Court should consider the weight of the evidence of the infringer’s culpability in light of the following factors:

1. whether the infringer copied the ideas or design of another,
2. whether the infringer, when he knew of the other’s patent protection, investigated the scope of the patent and formed a good faith belief that it was invalid or that it was not infringed,
3. the infringer’s behavior as a party to the litigation,
4. the infringer’s size and financial condition,
5. the closeness of the case,
6. the duration of the infringer’s misconduct,
7. any remedial action of the infringer,
8. the infringer’s motivation for harm, and
9. whether the infringer attempted to conceal its misconduct.

*Id.* at 1352 n.16 and 1364-65. *See also Imonex Servs., Inc. v. W.H. Munzprufer Dietmar Trenner GMBH*, 408 F.3d 1374, 1377 (Fed. Cir. 2005) (“[The Federal Circuit] has identified several criteria for assessing damages, including, *inter alia*, whether the infringer, when he knew of the other’s patent protection, investigated the scope of the patent and formed a good-faith belief that it was invalid or that it was not infringed, and the duration of defendant's misconduct”).

### **Attorneys' Fees**

35 U.S.C. § 285 provides that “[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party.” Determining whether a case is exceptional and whether attorneys’ fees should be granted under 35 U.S.C. § 285 is a two-step process. *Tate Access Floors*, 222 F.3d at 964. The first step is a factual determination whether the case is exceptional, and the second step, the Court exercises its discretion to determine whether attorneys’ fees should be awarded. *Id.*

The types of conduct that can form the basis for finding a case to be exceptional include willful infringement, misconduct during litigation and vexatious litigation. *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551 (Fed. Cir. 1989). Such conduct must be supported by clear and convincing evidence. *Id.*

### **Prejudgment Interest**

The patent statute authorizes awards of prejudgment interest. 35 U.S.C. § 284. The Supreme Court has held that “prejudgment interest should ordinarily be awarded.” *General Motors*, 461 U.S. at 655. “An award of prejudgment interest serves to make the patentee whole because the patentee also lost the use of its money due to infringement.” *Crystal Semiconductor*, 246 F.3d at 1361. In *General Motors*, the Supreme Court held that prejudgment interest is the rule, not the exception. *Id.*

“The rate of prejudgment interest and whether it should be compounded or uncompounded are matters left largely to the discretion of the district court. . . . In exercising that discretion, however, the district court must be guided by the purpose of prejudgment interest, which is ‘to ensure that the patent owner is placed in as good a position as he would

have been had the infringer entered into a reasonable royalty agreement.” *Bio-Rad*, 807 F.2d at 969 (citation omitted).

## ***ISSUES ON WHICH DEFENDANT BEARS THE BURDEN OF PROOF***

### **VALIDITY**

35 U.S.C. § 282 states in pertinent part:

A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such in validity.

“A party seeking to establish that particular claims are invalid must overcome the presumption of validity in 35 U.S.C. § 282 by clear and convincing evidence.” *Nystrom v. TREX Co., Inc.* 424 F.3d 1136, 1149 (Fed. Cir. 2005) (quoting *State Contracting & Eng’g Corp. v. Condotte Am., Inc.*, 346 F.3d 1057, 1067 (Fed. Cir. 2003)). “Clear and convincing evidence has been described as evidence which proves in the mind of the trier of fact ‘an abiding conviction that the truth of [the] factual contentions are highly probable.’” *Intel Corp. v. U.S. Int’l Trade Comm’n*, 946 F.2d 821, 830 (Fed. Cir. 1991) (quoting *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984)).

The presumption of validity “exists at every stage of the litigation.” *Canon Computer Sys., Inc. v. Nu-Kote Int’l, Inc.*, 134 F.3d 1085, 1088 (Fed. Cir. 1998). “[T]he burden of persuasion is and remains always upon the party asserting invalidity.” *American Hoist & Derrick Co. v. Sowa & Sons, Inc.*, 725 F.2d 1350, 1358 (Fed. Cir.), *cert. denied*, 469 U.S. 821 (1984) (emphasis in original). “The presumption is never annihilated, destroyed or even weakened, regardless of what facts are of record.” *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*,

732 F.2d 1572, 1574-75 (Fed. Cir. 1984) (emphasis in original). “[T]he burden of proving invalidity never shifts from the party asserting invalidity.” *Imperial Chem. Indus., PLC v. Danbury Pharmacal, Inc.*, 777 F. Supp. 330, 368 (D. Del. 1991), *aff’d w/o op.*, 972 F.2d 1354 (Fed. Cir. 1992).

“The burden of proof arises from the presumption that the Patent Office properly carried out its administrative functions.” *BOC Health Care*, 892 F. Supp. at 602. “It is not necessary that the court hold a patent valid; it is only necessary that it hold that the patent challenger has failed to carry its burden.” *Ajinomoto Co., Inc. v. Archer-Daniels-Midland Co.*, 1996 WL 621830 at \*5 (D. Del. 1996), *aff’d*, 228 F.3d 1338 (Fed. Cir. 2000). “[W]here the challenger fails to identify any persuasive evidence of invalidity, the very existence of the patent satisfies the patentee’s burden on the validity issue.” *Canon Computer Sys., Inc.*, 134 F.3d at 1088.

Where the art relied on at trial was considered by the Patent Office, the party asserting invalidity “has the added burden of overcoming the deference that is due to a qualified government agency presumed to have properly done its job, which includes one or more examiners who are assumed to have some expertise in interpreting the references and to be familiar from their work with the level of skill in the art and whose duty it is to issue only valid patents.” *American Hoist & Derrick*, 725 F.2d at 1359.

The United States Supreme Court “has consistently held that failure of the patentee to make use of a patented invention does not affect the validity of the patent.” *Special Equipment Co. v. Coe*, 324 U.S. 370, 378-79 (1945).



### **Prior Art**

One who challenges the validity of a patent bears the burden of establishing that a reference is “prior art” by clear and convincing evidence. *Mahurkar v. C.R. Bard, Inc.*, 79 F.3d 1572, 1576 (Fed. Cir. 1996). The *Mahurkar* Court held:

By challenging the validity of the ‘155 patent, Bard bore the burden of persuasion by clear and convincing evidence on all issues relating to the status of the Cook catalog as prior art.

“The presumption of validity . . . requires those challenging validity to introduce clear and convincing evidence on all issues relating to the status of a particular reference as prior art.”

*Sandt Tech. Ltd. v. Resco Metal & Plastics Corp.*, 264 F.3d 1344, 1350 (Fed. Cir. 2001).

“[O]ne of the fundamental principles of patent law” is “that prior art be available to the public.” *Scimed Life Sys., Inc. v. Johnson & Johnson*, C.A. No. 99-904-SLR, slip op. at 9 (D. Del. Aug. 15, 2001). A secret prior method or process does not qualify as prior art, even if the product of that process is disclosed to the public. *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1550 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

### **Anticipation**

35 U.S.C. § 102 states in pertinent part:

A person shall be entitled to a patent unless —

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

Anticipation is a question of fact. *Atofina v. Great Lakes Chem. Corp.*, 441 F.3d 991, 995 (Fed. Cir. 2006). “Invalidity based upon lack of novelty (often called ‘anticipation’) requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee.” *Oney v. Ratliff*, 182 F.3d 893, 895 (Fed. Cir. 1999) (citing *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302 (Fed. Cir. 1995)).

“A claim is anticipated and therefore invalid only when a single prior art reference discloses each and every limitation of the claim.” *Glaxo Inc. v. Novopharm Ltd.*, 52 F.3d 1043, 1047 (Fed. Cir.), *cert. denied*, 516 U.S. 908 (1995). “Anticipation requires a showing that each limitation of a claim is found in a single reference, either expressly or inherently.” *Atofina*, 441 F.3d at 999 (quoting *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1369 (Fed. Cir. 2005)). “There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention.” *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991).

“For a prior art reference to anticipate a claim, the reference must disclose each and every element of the claim with sufficient clarity to prove its existence in the prior art.” *Motorola, Inc. v. Interdigital Tech. Corp.*, 121 F.3d 1461, 1473 (Fed. Cir. 1997). “Although this disclosure requirement presupposes the knowledge of one skilled in the art of the claimed invention, that presumed knowledge does not grant a license to read into the prior art reference teachings that are not there. An expert’s conclusory testimony, unsupported by the documentary evidence, cannot supplant the requirement of anticipatory disclosure in the prior art reference itself.” *Id.*

“Prior art does not ‘anticipate’ for purposes of § 102 even ‘if the general aspects are the same and the differences in minor matters [is] [sic] . . . such as would suggest itself to one of ordinary skill in the art.’” *BOC Health Care*, 892 F. Supp. at 603 (quoting *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716 (Fed. Cir. 1984)). See also *Jamesbury Corp. v. Litton Indus. Prod., Inc.*, 756 F.2d 1556, 1560 (Fed. Cir. 1985) (“A prior art disclosure that ‘almost’ meets [the] standard . . . does not anticipate.”).

To anticipate, “[a] reference must describe the applicant’s claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it.” *In re Spada*, 911 F.2d 705, 708 (Fed.Cir.1990). Thus, “[t]o anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipatory subject matter.” *PPG Indus., Inc. v. Guardian Indus. Corp.*, 75 F.3d 1558, 1566 (Fed. Cir. 1996). “What a prior art reference discloses in an anticipation analysis is a factual determination.” *Yoon Ja Kim v. Conagra Foods, Inc.*, 465 F.3d 1312, 1325 (Fed. Cir. 2006) (quoting *Novo Nordisk Pharm., Inc. v. Bio-Tech. Gen. Corp.*, 424 F.3d 1347, 1355 (Fed. Cir. 2005)). “Invalidity by anticipation requires that the four corners of a single, prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation.” *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000)). “Whether making and using the invention would have required undue experimentation, and thus whether the disclosure is enabling, is a legal conclusion based upon several underlying factual inquiries.” *Amgen, Inc. v. Biogen, Inc.*, 973 F. Supp. 39, 43 (D. Mass. 1997) (quoting *Genentech, Inc. v. Novo Nordisk, A/S*, 108 F.3d 1361, 1365 (Fed. Cir. 1997)).

To show an inherent disclosure, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991). Inherency “requires that the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present.” *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 (Fed. Cir. 2002) (citations omitted). The mere fact that “a certain thing may result from a given set of circumstances is not sufficient” to show inherency. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations omitted).

“The inherent teaching of a prior art reference, a question of fact, arises both in the context of anticipation and obviousness.” *In re Napier*, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995).

“The law has long looked with disfavor upon invalidating patents on the basis of mere testimonial evidence absent other evidence that corroborates that testimony.” *Finnigan Corp. v. Int’l Trade Com’n*, 180 F.3d 1354, 1366 (Fed. Cir. 1999). As a matter of law, uncorroborated testimonial evidence, without more, cannot constitute clear and convincing evidence sufficient to invalidate a patent under 35 U.S.C. § 102. *See, e.g., IMX, Inc. v. LendingTree, LLC*, 469 F.Supp.2d 203, 215 (D. Del. 2007) (“Corroboration of a witness’ oral testimony is required to invalidate a patent under 35 U.S.C. § 102.”).

### **Obviousness**

35 U.S.C. § 103(a) states in pertinent part:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a

whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

“Whether a claimed invention is unpatentable as obvious under 35 U.S.C. § 103 is a question of law based on underlying findings of fact.” *Okajima v. Bourdeau*, 261 F.3d 1350, 1354 (Fed. Cir. 2001) (citation omitted). The underlying factual considerations were originally specified by *Graham v. John Deere Co. Of Kansas City*, 383 U.S. 1 (U.S. 1966), which held:

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.

*Id.* at 17-18. *See also KSR Int’l Co. v. Teleflex Inc.* No. 04-1350, slip op. at 2 (U.S. Apr. 30, 2007). “[Federal Circuit] precedent clearly establishes that the district court must make [*Graham*] findings before invalidating a patent for obviousness.” *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 663 (Fed. Cir. 2000). “Throughout the obviousness determination, a patent retains its statutory presumption of validity, *see* 35 U.S.C. § 282, and the movant retains the burden to show the invalidity of the claims by clear and convincing evidence as to underlying facts.” *McGinley*, 262 F.3d at 1349 (quoting *Rockwell Int’l. Corp. v. United States*, 147 F.3d 1358, 1364 (Fed. Cir. 1998)).

#### The Invention As A Whole Must Be Considered

“35 U.S.C. § 103 requires that obviousness be determined with respect to the invention as a whole.” *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143 (Fed. Cir.

1985). This is essential for “virtually all [inventions] are combinations of old elements.” *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998) (citing *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698 (Fed. Cir. 1983), *cert. denied*, 464 U.S. 1043 (1984)). “Thus, every element of a claimed invention may often be found in the prior art. However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention.” *In re Kotzab*, 217 F.3d 1365, 1369-70 (Fed. Cir. 2000) (citing *In re Rouffet*, 149 F.3d at 1357). “A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR*, No. 04-1350, slip op. at 14.

Just because an invention is simple does not mean that it is obvious under 35 U.S.C. § 103. “[S]imple and obvious are not synonymous terms.” *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 906 (Fed. Cir.), *cert. denied*, 474 U.S. 843 (1985). “[T]he simplicity of new inventions is oftentimes the very thing that is not obvious before they are made.” *Application of Van Wanderham*, 378 F.2d 981, 987 (C.C.P.A. 1967). “Indeed, simplicity may even be some evidence of invention.” *Id.* “The fact that the invention seems simple after it is made is not determinative of the question of obviousness.” *Id.* In fact, “[w]hen the art in question is relatively simple, as is the case here, the opportunity to judge by hindsight is particularly tempting. Consequently, the tests of whether to combine references need to be applied rigorously.” *McGinley*, 262 F.3d at 1351; *Ruiz*, 234 F.3d at 664.

Considered From the Viewpoint of One of Ordinary Skill in the Art  
At The Time of The Invention

“A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of the invention, to consider the thinking of one of ordinary

skill in the art, guided only by the prior art references and the then-accepted wisdom in the field.” *In re Kotzab*, 217 F.3d at 1369. Thus “[t]he decision of obviousness *vel non* is made not from the viewpoint of the inventor, but from the viewpoint of a person of ordinary skill in the field of the invention.” *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 956 (Fed. Cir. 1997). “The purpose is to assure an appropriate perspective of the decisionmaker, and to focus on conditions as they existed when the invention was made.” *Id.* As the Federal Circuit held in *Standard Oil Co. v. American Cyanamid Co.*, 774 F.2d 448, 454 (Fed. Cir. 1985):

The issue of obviousness is determined entirely with reference to a *hypothetical* “person having ordinary skill in the art.” It is only that hypothetical person who is presumed to be aware of all the pertinent prior art. The actual inventor’s skill is irrelevant to the inquiry, and this is for a very important reason. The statutory emphasis is on a person of *ordinary* skill. Inventors, as a class, according to the concepts underlying the Constitution and the statutes that have created the patent system, possess something - - call it what you will -- which sets them apart from the workers of *ordinary* skill, and one should not go about determining obviousness under § 103 by inquiring into what *patentees* (i.e. inventors) would have known or would likely have done, faced with the revelations of references. A person of ordinary skill in the art is also presumed to be one who thinks along the line of conventional wisdom in the art and is not one who undertakes to innovate, whether by patient, and often expensive systematic research or by extraordinary insights, it makes no difference which.

#### Hindsight Reasoning Is Improper

“The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.” *Interconnect Planning*, 774 F.2d at 1138. Thus, the pertinent obviousness inquiry takes place at the time of the invention. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). *Dembiczak* states:

Measuring a claimed invention against the standard established by section 103 requires the oft-difficult but critical step of

casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field.

*Id.* at 999 (citations omitted). *See also Ecolochem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1371 (Fed. Cir. 2000), *cert. denied*, 121 S. Ct. 1607 (2001). The finder of fact should “resist the temptation to read into the prior art the teachings of the invention in issue.” *Graham*, 383 U.S. at 36. *See also KSR*, No. 04-1350, slip op. at 17 (“A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.”).

#### There Must Be A Reason To Modify The Prior Art

To guard against the application of hindsight reasoning, the Court of Customs and Patent Appeals established a requirement that a teaching, suggestion, or motivation to combine known elements be shown in order to prove obviousness. *KSR*, No. 04-1350, slip op. at 14. The Federal Circuit has recently explained this test as an analysis of “whether a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and whether there would have been a reasonable expectation of success in doing so.” *Dystar Textilfarben GmbH v. C.H. Patrick Co.*, 464 F.3d 1356, 1360 (Fed. Cir. 2006). “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.” *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999).

However, the Federal Circuit has found that this analysis “is not a rigid categorical rule. The motivation need not be found in the references sought to be combined, but may be found in any number of sources, including common knowledge, the prior art as a whole,



or the nature of the problem itself. *Dystar Textilfarben GmbH v. C.H. Patrick Co.*, 464 F.3d 1356, 1361 (Fed. Cir. 2006).

While the suggestion to combine may come from the nature of the problem to be solved, the Court may not define the problem “in terms of its solution.” As the Federal Circuit stated in *Ecolchem*, 227 F.3d at 1372 (citations omitted):

Although the suggestion to combine references may flow from the nature of the problem . . . defining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.

Nor can the range of sources available “diminish the requirement for actual evidence. That is, the showing must be clear and particular . . . [citation omitted]. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not “evidence.” *Dembiczak*, 175 F.3d at 999. Nor can the assertion that the “knowledge may have been within the province of the ordinary artisan does not in and of itself make it so, absent clear and convincing evidence.” *Smiths Indus. Med Sys. Inc. v. Vital Signs Inc.*, 183 F.3d 1347, 1356-57 (Fed. Cir. 1999). “There still must be an explanation of “the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious.” *Rouffet*, 149 F.3d at 1359; *Kotzab*, 217 F.3d at 1370.

The Supreme Court confirmed that the teaching, suggestion, or motivation requirement provides helpful insight, because “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *Id.* at 14. Rather, it “can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the

claimed new invention does.” *Id.* at 15. But, the Supreme Court cautioned against ignoring “common sense” when applying such an analysis. *Id.* at 17.

It Is Rare That Suggestion Can Be Supplied By The Level Of Skill In  
The Art

It is rare that such a suggestion can be supplied simply by the level of skill in the art. In *Al-Site, Inc. v. VSI Int’l*, 174 F.3d 1308, 1324 (Fed. Cir. 1999), the Court stated:

Rarely, however, will the skill in the art component operate to supply missing knowledge or prior art to reach an obviousness judgment . . . Skill in the art does not act as a bridge over gaps in substantive presentation of an obviousness case, but instead supplies the primary guarantee of objectivity in the process.

*See also Ecolochem*, 227 F.3d at 1372; *Dembiczak*, 175 F.3d at 1000; *Kotzab*, 217 F.3d at 1371.

Teaching Away

The Federal Circuit stated in *Tec Air, Inc. v. Denso Mfg. Michigan Inc.*, 192 F.3d 1353, 1359-60 (Fed. Cir. 1999) (citations omitted):

To establish a *prima facie* case of obviousness, [the defendant] must show “some objective teaching in the prior art that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” . . . There is no suggestion to combine, however, if a reference teaches away from its combination with another source. . . . “A reference may be said to teach away when a person or ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant . . . [or] if it suggests that the line of development flowing from the reference’s disclosure is unlikely to be productive of the result sought by the applicant.” . . . If when combined, the references “would produce a seemingly inoperative device,” then they teach away from their combination.

Similarly, a suggested modification of a prior art reference that would require a substantial reconstruction and redesign of that reference, or a change in its the basic principles of operation, would not be sufficient to render claims obvious. *In re Ratti*, 46 C.C.P.A. 976, 981 (C.C.P.A. 1959). “If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984).

#### Objective Indicia of Nonobviousness Must be Considered

Objective indicia or secondary considerations of nonobviousness must be considered prior to reaching a conclusion of nonobviousness. *Ashland Oil, Inc. v. Delta Resins & Refractories*, 776 F.2d 281, 306 (Fed. Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986). Such evidence, such as commercial success and long-felt need, is both highly relevant and “a necessary part of the obviousness determination.” *WMS Gaming, Inc. v. Int’l Game Tech.*, 184 F.3d 1339, 1359 (Fed. Cir. 1999). These secondary considerations include “commercial success, long-felt but unresolved need, failure of others, copying and unexpected results.” *Ruiz*, 234 F.3d at 662-63; *Tec Air*, 192 F.3d at 1361. These indicia “are often [the] most probative and determinative of the ultimate conclusion of obviousness or nonobviousness.” *Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568, 1573 (Fed. Cir. 1996). *See also Tec Air*, 192 F.3d at 1361 (sales figures alone are evidence of commercial success sufficient to rebut *prima facie* obviousness).

“In *Graham* the Supreme Court explained that the public and commercial response to an invention is a factor to be considered in determining obviousness, and is entitled to fair weight. . . . The so-called ‘secondary considerations’ provide evidence of how the

patented device is viewed by the interested public: not the inventor, but persons concerned with the product in the objective arena of the marketplace.” *Arkie Lures*, 119 F.3d at 957.

“When a patentee asserts that commercial success supports its contention of nonobviousness, there must of course be a sufficient relationship between the commercial success and the patented invention. The term ‘nexus’ is often used, in this context, to designate a legally and factually sufficient connection between the proven success and the patented invention, such that the objective evidence should be considered in the determination of nonobviousness. The burden of proof as to this connection or nexus resides with the patentee.” *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir.), *cert. denied*, 488 U.S. 956 (1988).

“In meeting its burden of proof, the patentee in the first instance bears the burden of coming forward with evidence sufficient to constitute a *prima facie* case of the requisite nexus. . . . A *prima facie* case of nexus is generally made out when the patentee shows both that there is commercial success and that the thing (product or method) that is commercially successful is the invention disclosed and claimed in the patent.” *Id.*; *Tec Air*, 192 F.3d at 1361.

“When the patentee has presented a *prima facie* case of nexus, the burden of coming forward with evidence in rebuttal shifts to the challenger. . . . It is thus the task of the challenger to adduce evidence to show that the commercial success was due to extraneous factors other than the patented invention, such as advertising, superior workmanship, etc.” *Id.* at 1393.

“[W]hen differences that may appear technologically minor nonetheless have a practical impact, particularly in a crowded field, the decision maker must consider the obviousness of the new structure in this light. Such objective indicia as commercial success, or

filling an existing need, illuminate the technological and commercial environment of the inventor, and aid in understanding the state of the art at the time the invention was made.” *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1273 (Fed. Cir. 1991).

“[L]ong-felt need is analyzed as of the date or of an articulated identified problem and evidence of efforts to solve that problem.” *Texas Instr., Inc. v. United States Int’l Trade Comm’n*, 988 F.2d 1165, 1178 (Fed. Cir. 1993). “Nonobviousness is suggested by the failure of others to ‘find a solution to the problem which the patent[s] in question purport[] to solve. Such evidence shows indirectly the presence of a significant defect [in the prior art]. . . .’” *Symbol Techs., Inc. v. Opticon, Inc.*, 935 F.2d 1569, 1578-79 (Fed. Cir. 1991).

### **Validity Under § 112**

#### Written Description

The first paragraph of 35 U.S.C. § 112 requires that the specification of a patent contain a written description of the invention. “[I]nvalidating a claim requires a showing by clear and convincing evidence that the written description requirement has not been satisfied.” *Invitrogen Corp. v. Clonotech Labs., Inc.*, 429 F.3d 1052, 1072 (Fed. Cir. 2005). “The written description requirement does not require the applicant to ‘describe exactly the subject matter claimed, [instead] the description must clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed.’” *Union Oil Co. of California v. Atlantic Richfield Co.*, 208 F.3d 989, 997 (Fed. Cir. 2000). The requirement “ensures that, as of the filing date, the inventor conveyed with reasonable clarity to those of skill in the art that he was in possession of the subject matter of the claims.” *Id.* The Federal Circuit “has continued to apply the rule that disclosure of a species may be sufficient written description support for a later

claimed genus including that species.” *Bilstad v. Wakalopulos*, 386 F.3d 1116, 1124 (Fed. Cir. 2004).

“[C]ompliance with the written description requirement is a question of fact.” *Invitrogen Corp.*, 429 F.3d at 1072. “In order to satisfy the written description requirement, the disclosure as originally filed does not have to provide in haec verba support for the claimed subject matter at issue.” *Crown Operations Int’l, Ltd v. Solutia, Inc.*, 289 F.3d 1367, 1376 (Fed. Cir. 2002). An invention need not have been reduced to practice to have been adequately described. *Falko-Gunter Falkner v. Inglis*, 448 F.3d 1357, 1366 (Fed. Cir. 2006). The “requirement is satisfied by the patentee’s disclosure of such descriptive means as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention.” *Id.* Examples are not necessary for a patent’s disclosure to be adequate, nor is the length of the description relevant provided it communicates possession to one of skill in the art. *See id.* (quoting *In re Hayes Microcomputer Prods., Inc. Patent Litig.*, 982 F.2d 1527, 1534 (Fed. Cir. 1992) (“[T]he adequacy of the description of an invention depends on its content in relation to the particular invention, not its length.”)).

There is a strong presumption that an adequate written description of the claimed invention is present when the application is filed. *In re Wertheim*, 541 F.2d 257, 263, 191 U.S.P.Q. 90, 97 (C.C.P.A. 1976).

#### Enablement

Section 112 also requires that the specification describe the invention “in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same.” 35 U.S.C. § 112. This requirement “is satisfied when one skilled in the art, after reading the specification, could

practice the claimed invention without undue experimentation.” *AK Steel Corp. v. Sollac and Ugine*, 344 F.3d 1234, 1244 (Fed. Cir. 2003). Whether a patent specification is sufficiently enabling is a question of law based on underlying factual inquiries. *Falkner v. Ingils*, 448 F.3d 1357, 1363 (Fed. Cir. 2006). Invalidating a claim requires a showing by clear and convincing evidence that the enablement requirement is not satisfied. *Koito Mfg. Co. v. Turn-Key-Tech, LLC*, 381 F.3d 1142, 1156 (Fed. Cir. 2004).

Although a specification must enable the subject matter claimed, it need not enable a commercially viable embodiment to have met that standard. *See CFMT, Inc. v. Yieldup Int’l Corp.*, 349 F.3d 1333, 1338 (Fed. Cir. 2003) (“Enablement does not require an inventor to meet lofty standards for success in the commercial marketplace. Title 35 does not require that a patent disclosure enable one of ordinary skill in the art to make and use a perfected, commercially viable embodiment absent a claim limitation to that effect.”). This “is because the patent specification is written for a person of skill in the art, and such a person comes to the patent with the knowledge of what has come before[, ... thus], it is unnecessary to spell out every detail of the invention in the specification; only enough must be included to convince a person of skill in the art that the inventor possessed the invention and to enable such a person to make and use the invention without undue experimentation.” *LizardTech, Inc. v. Earth Res. Mapping, Inc.*, 424 F.3d 1336, 1345 (Fed. Cir. 2005).

The full scope of the claimed system is defined *by the claim terms* as construed by the Court. *See National Recovery Techs., Inc. v. Magnetic Separation Sys., Inc.*, 166 F.3d 1190, 1195-96 (Fed. Cir. 1999); *AK Steel Corp.* 344 F.3d at 1243-44. Thus, a proper enablement analysis consists of comparing the claims as construed to the specification to see if they are enabled. *AK Steel*, 344 F.3d at 1243-44.

“[W]hether undue experimentation is needed is not a single, simple factual determination, but rather is a conclusion reached by weighing many factual considerations.” *Warner-Lambert Co., v. Teva Pharms., U.S.A., Inc.*, 418 F.3d 1326, 1337 (Fed. Cir. 2005). The factual considerations that may be weighed include “(1) the quantity of experimentation necessary, (2) the amount of direction or guidance presented, (3) the presence or absence of working examples, (4) the nature of the invention, (5) the state of the prior art, (6) the relative skill of those in the art, (7) the predictability or unpredictability of the art, and (8) the breadth of the claims.” *Id.* (quoting *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988)). When considering these factors, the Federal Circuit has emphasized that it is “undue” experimentation that is required to invalidate – even complex experimentation is not undue if the art typically engages in such experimentation. *Massachusetts Institute of Technology v. A.B. Fortia*, 774 F.2d 1104, 227 USPQ 428 (Fed. Cir. 1985).

If an invention pertains to an art where the results are predictable, *e.g.*, in the mechanical arts, then disclosure of even a single embodiment can enable a broad claim. *Spectra-Physics, Inc. v. Coherent, Inc.*, 827 F.2d 1524 (Fed. Cir. 1987).

#### Indefiniteness

Section 112 ¶2 requires that “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112 (emphasis added). Whether a claim meets this statutory requirement or is invalid as “indefinite” is a question of law. *See Aero Prods. Int’l, Inc. v. Intex Recreation Corp.*, 466 F.3d 1000, 1015 (Fed. Cir. 2006). “If a claim is amenable to construction, ‘even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree,’ the claim is not indefinite.” *Id.* at 1016 (quoting *Exxon Res. & Eng’g Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001)).



## INEQUITABLE CONDUCT

### **General Requirements to Show Inequitable Conduct**

“Patent applicants and those substantively involved in the preparation or prosecution of a patent application owe a ‘duty of candor and good faith’ to the PTO,” and a breach of this duty may render the issued patent unenforceable for inequitable conduct. *M. Eagles Tool Warehouse, Inc. v. Fisher Tooling Co.*, 439 F.3d 1335, 1339 (Fed. Cir. 2006) (citations omitted). “To prove that a patent is unenforceable due to inequitable conduct, the alleged infringer must provide clear and convincing evidence of (1) affirmative misrepresentations of a material fact, failure to disclose material information, or submission of false material information and (2) an intent to deceive.” *Impax Labs., Inc. v. Aventis Pharms., Inc.*, 488 F. 3d 1366, 1374 (Fed. Cir. 2006). If the accused infringer has proven “threshold level[s]” of both materiality and intent, each by clear and convincing evidence, the trial court then balances materiality and intent to determine whether the conduct was inequitable, and the entire patent thus unenforceable. *Eli Lilly & Co. v. Zenith Goldline Pharms., Inc.*, No. 05-1396, 2006 WL 3792689 at \*9 (Fed. Cir. Dec. 26, 2006). “It was to mitigate the ‘plague’ whereby every patentee’s imperfections were promoted to ‘inequitable conduct’ that [the Federal Circuit] reaffirmed that both materiality and culpable intent must be established.” *Allied Colloids, Inc. v. Am. Cyanamid Co.*, 64 F.3d 1570, 1578 (Fed. Cir. 1995).

### **Materiality**

To determine what constitutes material information, courts may look to the definition of materiality provided by 37 C.F.R. § 1.56, which sets forth the PTO’s definition of materiality, the “reasonable examiner” standard, or any of the older standards for materiality. *See Impax*, 239 F.3d at 1374 (quoting *Digital Control, Inc. v. Charles Mach. Works*, 437 F.3d 1309, 1316 (Fed. Cir. 2006)).

Under the “reasonable examiner” standard, information is material if “a reasonable examiner would have considered such prior art important in deciding whether to allow the parent application.” *Id.* (quoting *Digital Control*, 437 F.3d at 1316). The “older standards” include:

- (1) the objective “but for” standard, “where the misrepresentation was so material that the patent should not have issued,”
- (2) the subjective “but for” test, “where the misrepresentation actually caused the examiner to approve the patent application when he would not otherwise have done so,”
- and (3) the “but it may have” standard, “where the misrepresentation may have influenced the patent examiner in the course of prosecution.”

*Id.* (quoting *Digital Control*, 437 F.3d at 1316).

Under Rule 1.56:

Information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability

37 C.F.R. § 1.56. Importantly, this provision was substantially narrowed in 1992 in response to the widespread perception that the defense of inequitable conduct had become an abusive allegation. As the Federal Circuit stated:

*the habit of charging inequitable conduct in almost every major patent case has become an absolute plague.* Reputable lawyers seem to feel compelled to make the charge against other reputable lawyers on the slenderest grounds, to represent their client's interests adequately, perhaps. They get anywhere with the accusation in but a small percentage of the cases, but such charges are not inconsequential on that account. They destroy the respect for one another's integrity, for being fellow members of an honorable profession, that used to make the bar a valuable help to the courts in making a sound disposition of their cases, and to sustain the good name of the bar itself. A patent litigant should be made to feel, therefore, that an unsupported charge of "inequitable conduct in the Patent Office" is a negative contribution to the rightful administration of justice.

*Burlington Indus., Inc. v. Dayco Corp.*, 849 F.2d 1418, 1422 (Fed. Cir. 1988) (emphasis added).

As the first sentence of Rule 1.56 makes clear, however, information cannot be material for purposes of inequitable conduct if it is "cumulative to information already of record or being made of record in the application." *See also Digital Control*, 437 F.3d at 1319 ("a withheld otherwise material prior art reference is *not* material for the purposes of inequitable conduct if it is merely cumulative to that information considered by the examiner") (emphasis in original). Whether a reference is cumulative to other before the examiner depends on the teachings of the references, questions of fact. *Id.*

Conduct during the prosecution of a related application is not material to the prosecution of a patent's claims unless the related application deals with the same subject matter as the claims. *See Baxter Int'l v. McGaw, Inc.*, 149 F.3d 1321, 1332 (Fed. Cir. 1998), ("where the claims are subsequently separated from those tainted by inequitable conduct through a divisional application, and where the issued claims have no relation to the omitted prior art, the

patent issued from the divisional application will not also be unenforceable due to inequitable conduct committed in the parent application.”) Likewise, prior litigation involving an ancestor application is not per se material to the prosecution of a later divisional application. *See Kothmann Enters., Inc. v. Trinity Indus., Inc.*, 455 F. Supp. 2d 608, 626 (S.D. Tex. 2006) (“In applying the MPEP, the [Federal Circuit] did not merely examine whether the patent-in-suit and the patent-in-prosecution involved similar claimed inventions, but specifically analyzed the claim terms at issue in both the litigation and the patent prosecution to see whether and how the litigation affected the patentability of the invention claimed in the application.”).

### **Intent**

To establish inequitable conduct, an accused infringer must also prove by clear and convincing evidence that the material conduct was performed with the deliberate intent to mislead the PTO. *Manville Sales Corp. v. Paramount Sys., Inc.*, 917 F.2d 544, 552 (Fed. Cir. 1990) (“‘Materiality does not presume intent, which is a separate and essential component of inequitable conduct.’ Appellants must show by clear and convincing evidence that Manville acted inequitably by *intending to mislead or deceive* the PTO.”) (quoting *Allen Organ Co. v. Kimball Int’l, Inc.*, 839 F.2d 1556, 1567 (Fed. Cir. 1988)) (emphasis original).

A finding of “gross negligence” is not sufficient to meet the threshold standard of intent. *Eli Lilly & Co.*, 2006 WL 3792689 at \*9 (citing *Kingsdown Med. Consultants*, 863 F.2d at 876). When examining intent, “[t]he simple absence of a reference from the prosecution record does not prove deceptive intent; there must be evidence sufficient to show, clearly and convincingly, the intent to withhold material information in order to deceive or mislead the examiner.” *Jazz Photo Corp. v. U.S. Int’l Trade Comm’n*, 264 F.3d 1094, 1110 (Fed. Cir. 2001). The Federal Circuit has made clear that “intent to deceive can not be inferred solely from the fact

that information was not disclosed; there must be a factual basis for a finding of deceptive intent.” *Catalina Lighting, Inc. v. Lamps Plus, Inc.* 295 F.3d 1277, 1289 (Fed. Cir. 2002). Where the reasons given for the withholding are plausible, intent to deceive cannot be inferred simply from the decision to withhold the reference. *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 1367 (Fed. Cir. 2003). Rather, “the record must contain clear and convincing evidence that the applicant made a deliberate decision to withhold a known material reference. Beyond that, the applicant must have withheld the material subject matter with the intent to deceive.” *Eli Lilly & Co.*, 2006 WL 3792689 at \*9.

### **Balancing**

If threshold levels of both materiality and intent have been established by clear and convincing evidence, the Court must weigh the facts, including *all* evidence of the patentee’s good faith, to determine the ultimate question of inequitable conduct and whether that conduct renders the patent unenforceable. *Id.*; *Kingsdown Med. Consultants v. Hollister, Inc.*, 863 F.2d 867, 876 (Fed. Cir. 1988) (requiring consideration of any evidence of patentee’s good faith).

In weighing materiality and intent, the more material the omission or the misrepresentation, the lower the level of intent required to establish inequitable conduct, and vice versa. *Monon Corp. v. Stoughton Trailers, Inc.*, 239 F.3d 1253, 1261 (Fed. Cir. 2001). However, if either materiality or intent is not found, then no further analysis need be performed, and the patent is not unenforceable. *Id.*

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# EXHIBIT 5

## **EXHIBIT 5**

### **ACUSHNET'S STATEMENT OF ISSUES OF LAW**

To the extent that any issues of fact set forth in Exhibit 3 may be considered issues of law, Acushnet incorporates these portions of Exhibit 3 by reference. These issues of law may change based on the Court's decisions on the pending summary judgment motions and motions in limine currently before the court.

#### **I. VALIDITY**

##### **A. Anticipation**

35 U.S.C. §102 (a) states:

A person shall be entitled to a patent unless the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant.

35 U.S.C. §102 (e) states in pertinent part:

A person shall be entitled to a patent unless the invention was described in a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent

Anticipation requires that a single prior art reference discloses each and every limitation of the claimed invention. *Schering Corp. v. Geneva Pharmaceuticals*, 339 F.3d 1373, 1379-80 (Fed. Cir. 2003). There is no requirement that each claim limitation be found in a single example of the single prior art reference. *See Glaxo Group Ltd. v. Apotex, Inc.*, 376 F.3d 1339, 1349 (Fed. Cir. 2004) (“[A]nticipation requires that all limitations of the claimed invention are described in a single reference, rather than a single example in the reference.”).



“[A] prior art reference may anticipate without disclosing a feature of the claimed invention if that missing characteristic is necessarily present, or inherent, in the single anticipating reference.” *SmithKline Beecham Corp. v. Apotex Corp.*, 403 F.3d 1331, 1343 (Fed. Cir. 2005); *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991). As such, “anticipation does not require actual performance of suggestions in a disclosure. Rather, [it] only requires that those suggestions be enabling to one of skill in the art.” *Bristol-Myers Squibb Co. v. Ben Venue Laboratories, Inc.*, 246 F.3d 1368, 1378 -1381 (Fed. Cir. 2001).

“Where... the result is a necessary consequence of what was deliberately intended, it is of no import that the article’s authors did not appreciate the results.” *MEHL/Biophile Int’l Corp. v. Milgraum*, 192 F.3d 1362, 1366 (Fed. Cir. 1999); *Atlas Powder Co. v. Ireco, Inc.*, 190 F.3d 1342, 1348-49 (Fed. Cir. 1999). In some cases, the inherent property corresponds to a claimed new benefit or characteristic of an invention otherwise in the prior art. In those cases, the new realization alone does not render the old invention patentable. *See Atlas Powder*, 190 F.3d at 1347.

Material incorporated by reference into a document may be considered in an anticipation determination. *Advanced Display Systems, Inc. v. Kent State University*, 212 F.3d 1272, 1282 (Fed. Cir. 2000). “Incorporation by reference provides a method for integrating material from various documents into a host document—a patent or printed publication in an anticipation determination—by citing such material in a manner that makes clear that the material is effectively part of the host document as it is were explicitly contained therein.” *Id.*

## B. Obviousness

35 U.S.C. §103 (a) states:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this titled, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

A claim may be obvious under 35 U.S.C. § 103 when the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art. *KSR Int'l Co. v. Teleflex, Inc.*, No. 04-1350, slip op. at 1-2 (U.S. April 30, 2007); *see also Alza Corp. v. Mylan Labs., Inc.*, 464 F.3d 1286, 1289 (Fed. Cir. 2006); *In re Kahn*, 441 F.3d 997, 985 (Fed. Cir. 2006) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 13, 14 (1966); *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989)).

Obviousness is a question of law based upon underlying factual questions, which are (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of non-obviousness.” *Alza Corp.*, 464 F.3d at 1289-90; *see also Dippin' Dots, Inc. v. Mosey*, 476 F.3d 1337, 1343 (Fed. Cir. 2007); *Pfizer v. Apotex, Inc.*, 480 F.3d 1348 (Fed. Cir. 2007).

If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. Likewise, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way,

using the technique is obvious. *KSR*, No. 04-1350, slip op. at 13. “When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has a good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not [sic] of innovation but of ordinary skill and common sense.” *Id.* at 17. In conducting an obviousness analysis, the court need not seek out precise teachings directed to the specific subject matter of the challenged claim, but rather a court can take into account the inferences and creative steps that a person of ordinary skill would employ. *Id.* at 14.

### **C. Secondary Considerations**

Once presented with a prima facie case of invalidity based on obviousness, a patentee must come forward with rebuttal evidence if the patent is to be saved from a finding of invalidity. *See Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1216 (Fed. Cir.1998); *Pfizer Inc. v. Apotex*, 480 F.3d 1348, 1360 (Fed. Cir. 2007). For this, the patentee may present evidence of objective indicia of non-obviousness, *i.e.* secondary considerations, such as commercial success, unexpectedly better results, failure of others, and copying. *See Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

As part of this evidence, however, a “nexus must be established between the merits of the claimed invention and evidence of commercial success[, or other secondary considerations,] before that evidence may become relevant to the issue of obviousness.” *Iron Grip Barbell Co., Inc. v. USA Sports, Inc.*, 392 F.3d 1317, 1324 (Fed. Cir. 2004) (quoting *Solder Removal Co. v. USITC*, 582 F.2d 628, 637 (1978)).

“[E]vidence of commercial success, or other secondary considerations, is only significant if there is a nexus between the claimed invention and the commercial success.” *Ormco Corp. v. Align Tech., Inc.*, 463 F.3d 1299, 1311-12 (Fed. Cir. 2006); *see also Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1539 (Fed. Cir. 1983).

**D. Specification (Written Description/Enablement/Best Mode/Indefiniteness)**

35 U.S.C. §112, ¶1 states in pertinent part:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The specification must describe the manner and process of making and using the invention so as to enable a person of skill in the art to make and use the full scope of the invention without undue experimentation. *See Lizardtech, Inc. v. Earth Resource Mapping, Inc.*, 424 F.3d 1336 1345 (Fed. Cir. 2005); *AK Steel Corp. v. Sollac and Ugine*, 344 F.3d 1234, 1244 (Fed. Cir. 2003).

“[T]here must be sufficient disclosure, either through illustrative examples or terminology, to teach those of ordinary skill how to make and how to use the invention as broadly as it is claimed.” *In re Vaeck*, 947 F.2d 488, 496 (Fed. Cir. 1991); *see also Plant Genetic Systems, N.V. v. DeKalb Genetics Corporation*, 315 F.3d 1335 (Fed. Cir. 2003) (“the

scope of the claims must bear a reasonable correlation to the scope of enablement provided by the specification to persons of ordinary skill in the art.”) (citations omitted); *National Recovery Technologies, Inc. v. Magnetic Separation Systems, Inc.*, 166 F.3d 1190, 1195-1196 (Fed. Cir. 1999) (“The enablement requirement ensures that the public knowledge is enriched by the patent specification to a degree at least commensurate with the scope of the claims.”) (citations omitted).

The Federal Circuit has stated that “[p]atent protection is granted in return for an enabling disclosure of an invention, not for vague intimation of general ideas that may or may not be workable.” *Genentech Inc. v. Novo Nordisk A/S*, 108 F.3d 1361, 1365-66 (Fed. Cir. 1997). Where the claimed invention is the application of an unpredictable technology an enabling description in the specification must provide those skilled in the art with a specific and useful teaching. 108 F.3d at 1367-68; *see also In re Fisher*, 427 F.2d 833, 839 (C.C.P.A. 1970) (in cases involving unpredictable factors, such as most chemical reactions and physiological activity, the scope of the enablement obviously varies inversely with the degree of unpredictability of the factors involved.”).

Where the specification teaches away from using the invention in a particular way, the teaching away “is itself evidence that at least a significant amount of experimentation would have been necessary to practice the claimed invention. *Liebel-Flarsheim Co. v. Medrad.*, No. 06-1156 2007 U.S. App. LEXIS 6607 at \*19 (Fed. Cir. March 22, 2007) (quoting *AK Steel*, 344 F.3d at 1244).

A patent is clearly not enabled nor adequately described where it does not disclose in its specification embodiments of the invention covering points throughout the broad range claimed

by the applicants. *AK Steel*, 344 F.3d at 1244; *see also, e.g., In re Cook*, 439 F.2d 730, 735-36 (C.C.P.A. 1971) (claims properly rejected when applicants failed to establish support for range limitations in claims; although applicants disclosed six examples, they failed to disclose embodiments at “various points throughout the broader claimed range.”); *In re Fisher*, 427 F.2d at 839 (claims properly rejected where claim required potency of “at least 1” but specification disclosed products having potencies from only 1.11 to 2.30); *Syngenta Seeds, Inc. v. Monsanto Co.*, 404 F.Supp.2d 594, 603-04 (D.Del. 2005) (affirming jury verdict that claims having “at least about 60%” limitation were invalid for lack of written description where the specification disclosed only one working gene in the claimed range).

The patent must describe the invention sufficiently to convey to a person of skill in the art that the patentee had possession of the claimed invention at the time of the application, i.e., that the patentee invented what is claimed. *Lizardtech*, 424 F.3d at 1345. In other words, the court must decide whether the invention applicants seek to protect by their claims is part of the invention that is described in the specification. *In re Wertheim*, 541 F.2d 257, 263 (C.C.P.A. 1976)

Where the claims of the patent are broader than the invention applicants described in the patent specification, the patent does not satisfy the written description requirement. *Id.* at 263 (claim properly rejected where it recites a solids content range of “at least 35%,” which is broader than the 25-65% range described in the patent); *see also In re Cook*, 439 F.2d 730, 735-36 (C.C.P.A. 1971) (claims properly rejected when applicants failed to establish support for range limitations in claims; although applicants disclosed six examples, they failed to disclose embodiments at “various points throughout the broader claimed range.”); *In re Fisher*, 427 F.2d

at 839 (claims properly rejected where claim required potency of “at least 1” but specification disclosed products having potencies from only 1.11 to 2.30); *Syngenta Seeds, Inc. v. Monsanto Co.*, 404 F.Supp.2d 594, 603-04 (D.Del. 2005) (affirming jury verdict that claims having “at least about 60%” limitation were invalid for lack of written description where the specification disclosed only one working gene in the claimed range).

The two requirements of 35 U.S.C. §112, ¶1 usually rise and fall together. “A recitation of how to make and use the invention across the full breadth of the claim is ordinarily sufficient to demonstrate that the inventor possesses the full scope of the invention, and vice versa.” *Lizardtech*, 424 F.3d at 1345.

Section 112, ¶ 1 provides that a patent’s specification “shall set forth the best mode contemplated by the inventor of carrying out his invention.” 35 U.S.C. § 112, ¶ 1. In order to prove that a patentee violated his obligation of disclosure, an accused infringer must show that (1) at the time he filed the patent application, the inventor had a best mode of practicing the invention and (2) that the specification does not adequately disclose what the inventor contemplated as the best mode so that those of ordinary skill in the art could practice it. *See United States Gypsum Co. v. Nat’l Gypsum Co.*, 74 F.3d 1209, 1212 (Fed. Cir. 1996).

A claim is invalid under 35 U.S.C. § 112, ¶2 for indefiniteness if the claim, when read in light of the specification, fails to apprise those skilled in the art of its scope. *See Smithkline Beecham Corp. v. Apotex Corp.*, 403 F.3d 1331, 1340 (Fed. Cir. 2005). The definiteness requirement of § 112 “focuses on whether the claims, as interpreted in view of the written description, adequately perform their function of notifying the public of the [scope of the]

patentee's right to exclude." *S3 Inc. v. nVIDIA Corp.*, 259 F.3d 1364, 1371-72 (Fed. Cir. 2001).

The Court must resort to the intrinsic record of the patent and its file history to determine whether the intrinsic record is adequate to permit an ambiguous claim limitation to be construed. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996). If, after consulting the intrinsic record, the claim term remains "insolubly ambiguous," then no narrowing construction can be made and the claim is invalid as indefinite. *See Honeywell Int'l*, 341 F.3d 1332, 1340 (Fed. Cir. 2003).

#### **E. Presumption of validity**

35 U.S.C. § 282 states in pertinent part:

A patent shall be presumed valid. Each claim of a patent (whether in independent, dependent or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.

A patent is presumed valid; however, the presumption is in no way dispositive. Instead, "The courts are the final arbiter of patent validity and, although courts may take cognizance of, and benefit from, the proceedings before the patent examiner, the question is ultimately for the courts to decide, without deference to the rulings of the patent examiner." *Quad Envtl. Techs. Corp. v. Union Sanitary Dist.*, 496 F.2d 870, 876 (Fed. Cir. 1991).



## II. INFRINGEMENT

### A. Literal Infringement

35 U.S.C. § 271(a) states:

Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

Literal infringement is determined in a two-step analysis. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc), aff'd., 517 U.S. 370 (1996).

Interpretation of the asserted claims is a question of law, and the court must determine the scope and meaning of the claims. *Id.* Claims are construed with reference to the claim language, the patent specification and the prosecution history, which together constitute the “intrinsic” evidence. *Loctite v. Ultraseal*, 781 F.2d 861, 867 (Fed. Cir. 1985). When determining the scope and meaning of the patent claims, the language of the claims in light of the specification is considered first. *McGill, Inc. v. John Zink Co.*, 736 F.2d 666, 672 (Fed. Cir. 1984).

In a patent case, the patentee bears the burden of proving infringement. *See Under Sea Indus., Inc. v. Dacor Corp.*, 833 F.2d 1551, 1557 (Fed. Cir. 1987). To establish infringement, in the second step, the patentee must demonstrate that the accused products contain each and every limitation of the asserted claim, either literally or by equivalence. *See S. Bravo Sys. v.*

*Containment Techs. Corp.*, 96 F.3d 1372, 1376 (Fed. Cir. 1996). “If even one limitation is missing, there is no literal infringement.” *Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1211 (Fed. Cir. 1998).

## **B. Infringement under the Doctrine of Equivalents**

If a product does not literally infringe the claims of an asserted patent, the product may still be found to infringe the patent under the Doctrine of Equivalents if there is “equivalence” between the accused product and each element of the patent’s claims. *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 608 (1950); *Warner-Jenkinson Co., Inc. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 28 (1997); *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 732 (2002). A claim limitation is equivalently present in an accused device if there are only “insubstantial differences” between the claim limitation and the corresponding aspect of the accused device. *CAE Screenplates, Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000). Thus, the doctrine of equivalents allows the patentee to claim those “*unimportant and insubstantial* changes and substitutions in the patent which, though adding nothing, would be enough to take the copied matter outside the claim.” *Festo VIII*, U.S. at 733 (emphasis added).

The doctrine of equivalents does not permit wholesale redrafting of a claim in order to capture an accused product; the deviation from the literal scope of the claim must be *insubstantial*, *Perkin-Elmer Corp. v. Westinghouse Elec. Corp.*, 822 F.2d 1528, 1532 (Fed. Cir. 1987). The test for determining whether differences are “insubstantial” is objective: whether a person with ordinary skill in the relevant art would find the differences to be “insubstantial.” *Hilton Davis Chem. Co. v. Warner-Jenkinson Co.*, 62 F.3d 1512, 1519 (Fed. Cir. 1995), *rev’d*

*on other grounds*, 520 U.S. 17 (1997). Where the patent describes a narrow mechanical improvement in a crowded field, the scope of potential equivalents is narrow. *Texas Instruments, Inc. v. U.S. Int’l Trade Comm’n*, 805 F.2d 1558, 1563 (Fed. Cir. 1986).

The U.S. Supreme Court has recently reconfirmed the rule that where the scope of a claim is narrowed in order to obtain the patent, the patentee is presumed to have conceded an inability to claim the broader subject matter, and will thereafter be estopped to assert infringement under the Doctrine of Equivalents. *Festo VIII*, 535 U.S. at 740; *Zenith Labs., Inc. v. Bristol-Myers Squibb Co.*, 19 F.3d 1418, 1424 (Fed. Cir. 1994), *cert. denied*, 115 S.Ct. 500 (1994). The analysis of the prosecution history estoppel bar involves three steps. First, the court determines whether the amendment was “narrowing” by comparing the original claim with the amended claim. If the original claim would have captured the alleged equivalent, then the amendment is “narrowing.” *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 344 F.3d 1359, 1366 (Fed. Cir. 2003). A claim may be “narrowed” either by amendment during the course of prosecution, or by presenting new claims in order to overcome an Examiner’s rejection. *Builder’s Concrete, Inc. v. Bremerton Concrete Prods. Co.*, 757 F.2d 255, 260 (Fed. Cir. 1985).

Second, the court examines the patent’s prosecution history to determine if the narrowing amendment was made for reasons “related to patentability.” *Festo IX*, 344 F.3d at 1366. It is the *patentee’s burden* to establish that the narrowing amendment was not “related to patentability” by reference only to the prosecution history. *Pioneer Magnetics, Inc. v. Micro Linear Corp.*, 330 F.3d 1352, 1356 (Fed. Cir. 2003); *Festo IX*, 344 F.3d at 1366. If the prosecution history reveals that the patentee intended to narrow the claim in order to overcome

an examiner's rejection, then prosecution history estoppel will apply. *Id.* Similarly, if the prosecution history reveals *no reason* for the narrowing, then the court shall presume that the amendment was related to patentability, and prosecution history estoppel will apply. *Id.* at 1366-67. The estoppel will apply regardless of whether the narrowing amendment was suggested by an examiner or was voluntarily proffered by the applicants. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 234 F.3d 558, 563 (Fed. Cir. 2000) ("*Festo XI*") ("[V]oluntary claim amendments are treated the same as other amendments.").

Third, if the patentee cannot prove that the prosecution history demonstrates that the reason for the amendment was not "related to patentability," then the court determines the scope of the estoppel. In determining the scope of the estoppel, the court begins with the presumption that the patentee intended to surrender *all territory* between the original claim limitation and the as-amended claim. *Festo XIII*, 535 U.S. at 740. The standards for rebuttal are exacting and very rarely have been met by a patentee. *See Festo VIII*, 535 U.S. at 740-41.

Since *Festo VIII* was decided, the Federal Circuit has consistently found, as a matter of law, that the patentee failed to rebut the presumption of total surrender and, therefore, could not establish infringement by equivalents. *See, e.g., Biagro*, 423 F.3d at 1307 (affirming summary judgment holding that plaintiff did not rebut the presumption of surrender and that prosecution history estoppel barred it from asserting infringement under the doctrine of equivalents); *Research Plastics, Inc. v. Fed. Packaging Corp.*, 421 F.3d 1290, 1299 (Fed. Cir. 2005) (stating that plaintiff could not rebut the presumption and, therefore, affirming summary judgment ruling of non-infringement); *Rhodia Chimie. v. PPG Indus., Inc.*, 402 F.3d 1371, 1383 (Fed. Cir. 2005) (holding that patentee failed to rebut presumption that it surrendered the range

between the original and amended claims and, therefore, affirming grant of summary judgment of non-infringement); *Bus. Objects, S.A. v. Microstrategy, Inc.*, 393 F.3d 1366, 1374-75 (Fed. Cir. 2005) (affirming Northern District of California Court's grant of summary judgment of non-infringement under doctrine of equivalents as to two claims because patentee failed to rebut presumption of total surrender but reversing summary judgment ruling that prosecution history estoppel applied to third claim because there was no narrowing amendment); *Glaxo Wellcome, Inc. v. IMPAX Labs., Inc.*, 356 F.3d 1348, 1356 (Fed. Cir. 2004) (affirming Northern District of California Court's grant of summary judgment of non-infringement where patentee failed to rebut the *Festo* presumption); *Talbert Fuel Sys. Patents Co. v. Unocal Corp.*, 347 F.3d 1355, 1360 (Fed. Cir. 2003) (holding that the patentee could not meet the rebuttal criteria required under *Festo VIII*); *Pioneer Magnetics*, 330 F.3d at 1357 (affirming summary judgment ruling of non-infringement under doctrine of equivalents because patentee failed to rebut the presumption of surrender under *Festo VIII*).

If a patentee can prove that, due to changes in technology between the time the asserted patent claims were filed and the equivalent was generated, the alleged equivalent was "unforeseeable at the time of the amendment and thus beyond a fair interpretation of what was surrendered," it may overcome the presumption of surrender. *Honeywell Int'l Inc. v. Hamilton Sundstrand Corp.*, 370 F.3d 11311, 1140 (Fed. Cir. 2004).

The range of equivalents may be further limited by specific disavowals of claim scope contained within the patent itself. *Scimed Life Sys. v. Advanced Cardiovascular Sys.*, 242 F.3d 1337, 1341 (Fed. Cir. 2001) ("Where the specification makes clear that the invention does not include a particular feature, that feature is deemed to be outside the reach of the claims of the

patents, even though the language of the claims, read without reference to the specification, might be considered broad enough to encompass the feature in question.”); *see also*, *Honeywell Int’l Inc. v. ITT Indus., Inc.*, 452 F.3d 1312 (Fed. Cir. 2006); *J&M Corp. v. Harley-Davidson, Inc.*, 269 F.3d 11360 (Fed. Cir. 2001).

### **III. REMEDIES**

#### **A. Laches**

35 U.S.C. § 286 states in pertinent part:

No recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action.

To invoke the defense of laches, a defendant must prove that (1) the plaintiff “delayed filing suit for an unreasonable and inexcusable length of time” and (2) the “delay operated to the prejudice or injury of the defendant.” *A.C. Auckerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020, 1032 (Fed. Cir. 1992).

#### **B. Marking**

35 U.S.C. § 287 states in pertinent part:

In the event of failure to mark, no damages shall be recovered by the patentee in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such notice. Filing of an action for infringement shall constitute such notice.

#### **C. Damages**

35 U.S.C. § 284 states:

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

In determining a reasonable royalty, courts often apply the fifteen factors first enunciated in *Georgia-Pacific Corp. v. United States Plywood Corp.*, 318 F. Supp. 1116, 1120 (S.D.N.Y. 1970), *modified and aff'd*, 446 F.2d 295 (2d Cir.), *cert. denied*, 404 U.S. 870 (1971). *See Unisplay, S.A. v. American Elec. Sign Co.*, 69 F.3d 512, 517, n.7 (Fed. Cir. 1995) (citing to *Georgia-Pacific* factors). These factors are:

1. The royalties received by the patentee for the licensing of the patent in suit, proving or tending to prove an established royalty.
2. The rates paid by the licensee for the use of other patents comparable to the patent in suit.
3. The nature and scope of the license, as exclusive or non-exclusive; or as restricted or nonrestricted in terms of territory or with respect to whom the manufactured product may be sold.
4. The licensor's established policy and marketing program to maintain his patent monopoly by not licensing others to use the invention or by granting licenses under special conditions designed to preserve that monopoly.
5. The commercial relationship between the licensor and licensee, such as, whether they are competitors in the same territory in the same line of business; or whether they are inventor and promotor [sic].

6. The effect of selling the patented specialty in promoting sales of other products of the licensee; the existing value of the invention to the licensor as a generator of sales of his non-patented items; and the extent of such derivative or convoyed sales.

7. The duration of the patent and the term of the license.

8. The established profitability of the product made under the patent; its commercial success; and its current popularity.

9. The utility and advantages of the patent property over the old modes or devices, if any, that had been used for working out similar results.

10. The nature of the patented invention; the character of the commercial embodiment of it as owned and produced by the licensor; and the benefits to those who have used the invention.

11. The extent to which the infringer has made use of the invention; and any evidence probative of the value of that use.

12. The portion of the profit or of the selling price that may be customary in the particular business or in comparable businesses to allow for the use of the invention or analogous inventions.

13. The portion of the realizable profit that should be credited to the invention as distinguished from non-patented elements, the manufacturing process, business risks, or significant features or improvements added by the infringer.

14. The opinion testimony of qualified experts.



15. The amount that a licensor (such as the patentee) and a licensee (such as the infringer) would have agreed upon (at the time the infringement began) if both had been reasonably and voluntarily trying to reach an agreement; that is, the amount which a prudent licensee – who desired, as a business proposition, to obtain a license to manufacture and sell a particular article embodying the patented invention – would have been willing to pay as a royalty and yet be able to make a reasonable profit and which amount would have been acceptable by a prudent patentee who was willing to grant a license.

*Georgia Pacific*, 318 F. Supp. at 1120..

#### **D. Injunctions**

35 U.S.C. § 283 states in pertinent part:

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

“[T]he decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity. . . .” *eBay, Inc. v. MercExchange, L.L.C.*, 126 S. Ct. 1837, 1841 (2006).

According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. “A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering

the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” *Id.* at 1839.

**E. Attorneys Fees**

35 U.S.C. § 285 provides that “[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party.” Determining whether a case is exceptional and whether attorneys’ fees should be granted under 35 U.S.C. § 285 is a two-step process. *Tate Access Floors*, 222 F.3d at 964. The first step is a factual determination whether the case is exceptional, and the second step, the Court exercises its discretion to determine whether attorneys’ fees should be awarded. *Id.*

# EXHIBIT 6

**EXHIBIT 6**  
**BRIDGESTONE'S EXHIBIT LIST/ACUSHNET OBJECTIONS**

No.	Beg Bates	End Bates	Date	Description	Objections
1			April 28, 1998	U.S. Patent No. 5,743,817 -- Ribbon Copy	105, 802, 805
2			July 21, 1998	U.S. Patent No. 5,782,707 -- Ribbon Copy	105, 802, 805
3			September 8, 1998	U.S. Patent No. 5,803,834 -- Ribbon Copy	105, 802, 805
4			October 21, 2003	U.S. Patent No. 6,634,961-- Ribbon Copy	105, 802, 805
5			January 20, 2004	U.S. Patent No. 6,679,791-- Ribbon Copy	105, 802, 805
6			October 12, 1993	U.S. Patent No. 5,252,652 -- Ribbon Copy	105, 802, 805
7				U.S. Patent No. 5,553,852 -- Ribbon Copy	105, 802, 805
8	BSP 202200	BSP 203826		U.S. Patent No. 5,743,817 -- File History	105, 802, 805, 901
9	BSP 202885	BSP 203020		U.S. Patent No. 5,252,652 -- File History	105, 802, 805, 901
10	BSP 203021	BSP 203127	September 10, 1996	U.S. Patent No. 5,553,852 -- File History	105, 802, 805, 901
11	BSP 203287	BSP 203370		U.S. Patent No. 5,782,707 -- File History	105, 802, , 805, 901
12	BSP 203371	BSP 203435		U.S. Patent No. 5,803,834 -- File History	105, 802, 805, 901
13	BSP 203488	BSP 203655		U.S. Patent No. 6,634,961 -- File History	105, 802, 805, 901
14	BSP 203656	BSP 203783		U.S. Patent No. 6,679,791 -- File History	105, 802, 805, 901
15	BSP 242777	BSP 242792	November 5, 1989	U.S. Patent No. 5,252,652 -- Certified Priority Document Translation (JP 1-118460)	105, 802, 805, 901
16	BSP 242793	BSP 242813	July 8, 1993	U.S. Patent No. 5,553,852 -- Certified Priority Document Translation (JP 5-193065)	105, 802, 805, 901
17	BSP 242814	BSP 242830	October 14, 1994	U.S. Patent No. 5,743,817 -- Certified Priority Document Translation (JP 6-276109)	105, 802, 805, 901
18	BSP 242831	BSP 242857	March 11, 1996	U.S. Patent No. 5,782,707 -- Certified Priority Document Translation (JP 8-082121)	105, 802, 805, 901
19	BSP 242858	BSP 242880	March 1, 1996	U.S. Patent No. 5,803,834 -- Certified Priority Document Translation (JP 8-071135)	105, 802, 805, 901

20	BSP 242881	BSP 242910	May 30, 2001	U.S. Patent No. 6,634,961 -- Certified Priority Document Translation (JP 2001-163238)	105, 802, 805, 901
21	BSP 242911	BSP 242928	June 26, 2000	U.S. Patent No. 6,679,791 -- Certified Priority Document Translation (JP 2000-190640)	105, 802, 805, 901
22			December 14, 1994	U.S. Patent No. 5,743,817 -- Certified Priority Document Translation (JP 6-333024)	105, 802, 805, 901
23			July 21, 1998	U.S. Patent No. 5,782,707	105, 802, 805, 901
24			September 8, 1998	U.S. Patent No. 5,803,834	105, 802, 805, 901
25			October 21, 2003	U.S. Patent No. 6,634,961	105, 802, 805, 901
26			January 20, 2004	U.S. Patent No. 6,679,791	105, 802, 805, 901
27			September 10, 1996	U.S. Patent No. 5,553,852	105, 802, 805, 901
28			April 28, 1998	U.S. Patent No. 5,743,817	105, 802, 805, 901
29			October 12, 1993	U.S. Patent No. 5,252,652	105, 802, 805, 901
30			November 16, 2004	U.S. Patent No. 6,818,705	105
31				U.S. Patent No. 6,818,705 -- File History	105
32			March 8, 1998	U.S. Patent No. 4,729,861	105
33				U.S. Patent No. 4,729,861 -- File History	105
34			June 26, 1990	U.S. Patent No. 4,936,587	105
35				U.S. Patent No. 4,936,587 -- File History	105
36			January 14, 1992	U.S. Patent No. 5,080,367	105
37				U.S. Patent No. 5,080,367 -- File History	105
38	AB 0000162	AB 0000189	2005-2006	◀-NXT-▶ and ▶NXT▶ Construction Basics	
39	AB 0038761	AB 0038762		Manufacturing and Construction information	802, 805, 403, 105
40	AB 0039305	AB 0039314		New Product Reviews	
41	AB 0048178			Manufacturing and Construction information	802, 805, 403, 105
42	AB 0050820	AB 0050834		Manufacturing and Construction information	802, 805, 403, 105
43	AB 0051522	AB 0051526	1999-2003	Manufacture and construction information	802, 805, 403, 105
44	AB 0052046	AB0052049		Manufacturing and Construction information	802, 805, 403, 105

45	AB 0052057	AB 0052059		Manufacturing and Construction information	802, 805, 403, 105
46	AB 0052269		1999-2003	Manufacturing and Construction information	802, 805, 403, 105
47	AB 0052820	AB 0052827		Manufacturing and Construction information	401, 402, 604, 802, 805
48	AB 0086634	AB 0086638		Manufacturing and Construction information	802, 805, 403, 105
49	AB 0086660	AB 0086667		Manufacturing and Construction information	802, 805, 403, 105
50	AB 0087052			Manufacturing and Construction information	802, 805, 403, 105
51	AB 0004619	AB 0004621	June 3, 2005	Pinnacle Exception Testing Log	802, 805, 403, 105
52	AB 0004622	AB 0004630	June 30, 2005	DT So/Lo Testing Log	802, 805, 403, 105
53	AB 0004631	AB 0004642	May 18, 2005	Pro V1 Testing Log	802, 805, 403, 105
54	AB 0004643	AB 0004644	May 18, 2005	NXT Testing Log	802, 805, 403, 105
55	AB 0004645	AB 0004646	June 30, 2005	DT So/Lo Testing Log	802, 805, 403, 105
56	AB 0004647	AB 0004658	May 18, 2005	NXT Tour Testing Log	802, 805, 403, 105
57	AB 0004659	AB 0004664	May 18, 2005	NXT Testing Log	802, 805, 403, 105
58	AB 0004665	AB 0004667	May 18, 2005	Pro V1 Testing Log	802, 805, 403, 105
59	AB 0004668	AB 0004671	May 11, 2005	Pro V1x Testing Log	802, 805, 403, 105
60	AB 0004672	AB 0004682	May 18, 2005	NXT Tour Testing Logs	802, 805, 403, 105
61	AB 0004683	AB 0004709	May 18, 2005	Pro V1 and Pro V1x Testing Logs	802, 805, 403, 105
62	AB 0086631	AB 0086633	January 25, 2002	Pro V1* Testing Logs	802, 805, 403, 105
63	BSP046550	BSP046553		B330 packaging and display	105, 1002, 901, 401, 402
64	BSP048011	BSP048011		Tour B330 box	105, 1002, 901, 401, 402
65	BSP048012	BSP048014		Precept Laddie Xtreme and Lady Pearl packaging	105, 1002, 901, 401, 402
66	BSP050537	BSP050538		Precept new Lady ball packaging (Lady Diamond)	105, 1002, 901, 401, 402
67	BSP050539	BSP050539		Precept U-Tri Extra Distance ball packaging	105, 1002, 901, 401, 402
68	BSP050540	BSP050540		Precept U-Tri Extra Spin ball packaging	901, 1002, 105, 401, 402,
69	BSP050541	BSP050542		Precept U-Tri Tour ball packaging	901, 1002, 105, 401, 402
70	BSP050543	BSP050544		Mc Lady Packaging	901, 1002, 105, 401, 402
71	BSP050545	BSP050545		Precept Mc Lady Packaging	901, 1002, 105, 401, 402
72	BSP050546	BSP050547		MC Lady Packaging	901, 1002, 105, 401, 402

73	BSP050548	BSP050548		Precept Laddie Packaging	901, 1002, 105, 401, 402
74	BSP050550	BSP050551		Tour 330 Packaging	901, 1002, 105, 401, 402
75	BSP050552	BSP050553		Precept Laddie Extreme Packaging	
76	BSP087986	BSP087986		Precept MC Senior Golf Ball Packaging	901, 1002, 105, 401, 402
77	BSP087987	BSP087987		Precept MC Lady Golf Ball Packaging	901, 1002, 105, 401, 402
78	BSP087988	BSP087992		Precept MC Tour Premium Ball Packaging	901, 1002, 105, 401, 402
79	BSP087993	BSP087997		Precept MC Tour Advantage Golf Ball Packaging	901, 1002, 105, 401, 402
80	BSP087998	BSP087999		Precept Tour Premium LS Golf Ball Packaging	901, 1002, 105, 401, 402
81	BSP088000	BSP088000		Precept MC Double Cover Golf Ball Packaging	901, 1002, 105, 401, 402
82	BSP088001	BSP088002		Precept Extra Distance Golf Ball Packaging	901, 1002, 105, 401, 402
83	BSP088003	BSP088004		Bridgestone EV Classic Spin Golf Ball Packaging	901, 1002, 105, 401, 402
84	BSP088005	BSP088005		Precept MC Spin Golf Ball Packaging	901, 1002, 105, 401, 402
85	BSP094584	BSP094585		Bridgestone EV Classic Distance	901, 1002, 105, 401, 402
86	BSP094586	BSP094587		Precept Tour - Premium	901, 1002, 105, 401, 402
87	BSP094588	BSP094589		Precept Extra Spin Packaging	901, 1002, 105, 401, 402
88	BSP094590	BSP094592		Precept Pwdrive Packaging	901, 1002, 105, 401, 402
89	BSP094593	BSP094594		Bridgestone EV Classic Distance Packaging	901, 1002, 105, 401, 402
90	BSP094595	BSP094596		Precept D - Force Packaging	901, 1002, 105, 401, 402
91	BSP094597	BSP094598		Precept Tour Advantage Packaging	901, 1002, 105, 401, 402
92	BSP094599	BSP094600		Precept D-Feel Packaging	901, 1002, 105, 401, 402
93	AB 90094	AB 90270		2001 Competitive Ball Review	
94	AB 90271	AB 90382		2002 Competitive Ball Review	
95	AB 90383	AB 90438		2003 Competitive Ball Review	
96	AB 90439	AB 90484		2004 Competitive Ball Review	
97	AB 90485	AB 90553		2005 Competitive Ball Review	
98	AB 0013145	AB 0015262		Change Notice	
99	AB 0015272	AB 0015273		Change Notice	
100	AB 0015636	AB 0016036		Change Notices	

101	AB 0035141	AB 0035144	December 12, 2002	Change Notice All Plants	
102	AB 0035148	AB 0035149	November 15, 2002	Change Notice All Plants	
103	AB 0035709	AB 0035712		Change Notice	
104	AB 0037636	AB 0037638	October 3, 2000	Change Notice All Plants	
105	AB 0037882	AB 0037886	January 15, 2001	Change Notice BP11	
106	AB 0038639	AB 0038642		Change Notices	
107	AB 0091268	AB 0092335		Change Notice	
108	AB 0091268	AB 0092335		Change Notices	
109	AB 0110474	B 0111866		Change Notice	
110	AB 0110474	AB 0111866		Change Notices	
111	AB 0110542	AB 0110547	November 30, 2000	Change Notice BP11	
112				Chart re: catalyst, grades, molecular weight, etc.	
113			November 25, 1998	Struktol Technical Data (Jeff Dalton Deposition Exh. 21 (7/21/06))	<b>401, 402, 802, 805, 901</b>
114	AB 0000034	AB 0000036	July 25, 2006	Memo from Soft and Fast Research and Product Team re: Minutes from 11/30 and 12/7	802, 805, 401, 402, 403, 1006, 105
115	AB 0000057	AB 0000061	July 26, 2005	M. Rajagopalan memorandum re: Struktol A95 peroxide ladder	802, 805, 401, 402, 403, 1006, 1005
116	AB 0000068	AB 0000070	July 26, 2005	Memo from P. Voorheis to M. Rajagopalan re: DTDS soft and fast core with CB23	802, 805, 401, 402, 403, 1006, 105
117	AB 0000071	AB 0000075	July 26, 2005	Memo from P. Voorheis to M. Rajagopalan re: Zinc salt of pentachlorothiophenol in core formulations	802, 805, 401, 402, 403, 1006, 105
118	AB 0000076	AB 0000080	July 26, 2005	M. Rajagopalan memorandum re: Low Levels of ZDA in a PCTP Cure	802, 805, 401, 402, 403, 1006, 105
119	AB 0000100	AB 0000105	August 30, 2002	Memo from P. Voorheis to M. Rajagopalan re: Core aging/drying	802, 805, 402, 403, 1006, 105
120	AB 0024491	AB 0024494	February 27, 2003	Zinc Salt of Pentachlorothiophenol supplier and shipment information	401, 402, 802, 805, 1006
121	AB 0038767	AB 0038770		Zinc/Petrachlorothiophenol/Filler/Rubber Experiment	802, 805, 402, 403, 1006



122	AB 0044782	AB 0044786		Titleist and Foot-Joy Worldwide, <i>Transfiguration Where are we now and where are we going? Part I</i>	401, 402, 403, 802, 805, 1006
123	AB 0045453	AB 0045468	January 30, 2002	ZnPCTP MRC Update	802, 805, 401, 402
124	AB 0045628	AB 0045634	August 30, 2005	M. Rajagopalan memorandum re: pentachlorothiophenol	802, 805, 401, 402
125	AB 0054955	AB 0055142	11/00/98	Operator's Manual RPA 2000 for use with OS/2	
126	BSP241493	BSP241760		JSR Handbook (Japanese)	901, 1006, 802, 805, 105, 403
127	LAN0001	LAN0027	April 14, 1999	LANXESS Document	901, 1006, 802, 805, 105, 401, 402, 403
128	SB 11106	SB 11113	September 26, 2001	Pro V1 * 392 Outer Core Formulations	105, 401, 402, 403, 802, 805
129			June 7, 2004	Pro V1 392 chart (L. Bissonette Deposition Exh. 8 (11.15.06))	<b>105, 802, 805, 1002, 1006</b>
130				Franics deS. Lynch - Exhibit 5-10; Drawings	802, 805, 602, 901
131	AB 0001237			TS392-4wp6 Dimple Layout	401, 402
132	AB 0001530	AB 0001532		TS 392-5 Dimple Layout	401, 402
133	AB 0087844	AB 0087858		Graphs	
134			May 1, 2006	Acushnet's 2nd Supplement to Responses to Bridgestone's 2nd Interrogatories (Nos. 25-39)	Compound, 401, 402, 403
135			July 6, 2006	Acushnet's 3rd Supplement to Responses to Bridgestone's 2nd Interrogatories (Nos. 25-39)	Compound, 401, 402, 403
136			December 18, 2006	Acushnet's 3rd Supplement to Responses to Bridgestone's 2nd Interrogatories (Nos. 25-39)	Compound, 401, 402, 403
137			December 18, 2006	Acushnet's 6th Supp. Responses to Bridgestone's 1st Interrogatories (Nos. 1-24)	Compound, 401, 402, 403
138			December 18, 2006	Acushnet's Responses to Bridgestone's 6th Interrogatories (Nos. 54-69)	Compound, 401, 402, 403
139			December 18, 2006	Acushnet's Supp. Responses to Bridgestone's 5th Interrogatories (Nos. 52-53)	Compound, 401, 402, 403

140			June 20, 2005	Acushnet's Initial Disclosure Pursuant to Rule 26(a)(1)	Compound, 401, 402, 403
141			February 8, 2006	Acushnet's 1st Supplement to Responses to Bridgestone's 2nd Interrogatories (Nos. 25-39)	Compound, 401, 402, 403
142			October 6, 2006	Acushnet's 2nd Supplemental Initial Disclosures Pursuant to Rule 26(a)(1)	Compound, 401, 402, 403
143			July 6, 2006	Acushnet's 5th Supp. Responses to Bridgestone's 1st Interrogatories (Nos. 1-24)	Compound, 401, 402, 403
144			July 7, 2005	Acushnet's Responses to Bridgestone's 1st Interrogatories (Nos. 1-24)	Compound, 401, 402, 403
145			July 7, 2005	Acushnet's Responses to Bridgestone's 1st Requests for the Production of Documents (Nos. 1-100)	Compound, 401, 402, 403
146			August 29, 2005	Acushnet's Responses to Bridgestone's 2nd Interrogatories (Nos. 25-39)	Compound, 401, 402, 403 Compound, 401, 402, 403
147			January 9, 2006	Acushnet's Responses to Bridgestone's 3rd Interrogatories (Nos. 40-42)	Compound, 401, 402, 403
148			August 7, 2006	Acushnet's Responses to Bridgestone's 2nd Interrogatories (Nos. 43-51)	Compound, 401, 402, 403
149			August 24, 2006	Acushnet's Responses to Bridgestone's 5th Interrogatories (Nos. 52-53)	Compound, 401, 402, 403
150			August 29, 2005	Acushnet's Responses to Bridgestone's 2nd Set of Requests for the Production of Documents (Nos. 101-155)	Compound, 401, 402, 403
151			December 18, 2006	Acushnet's Responses to Bridgestone's Requests for Admission	Compound, 401, 402, 403
152			September 28, 2005	Acushnet's Supp. Responses to Bridgestone's 1st Interrogatories (Nos. 1-24)	Compound, 401, 402, 403
153			February 8, 2006	Acushnet's Supp. Responses to Bridgestone's 1st Interrogatories (Nos. 1-24)	Compound, 401, 402, 403

154			May 1, 2006	Acushnet's Supp. Responses to Bridgestone's 1st Interrogatories (Nos. 1-24)	Compound, 401, 402, 403
155			December 18, 2006	Acushnet's Supp. Responses to Bridgestone's 3rd Interrogatories (Nos. 40-42)	Compound, 401, 402, 403
156			December 18, 2006	Acushnet's Supp. Responses to Bridgestone's 4th Interrogatories (Nos. 43-51)	Compound, 401, 402, 403
157			October 3, 2006	Acushnet's Supplemental Initial Disclosures Pursuant to Rule 26(a)(1)	Compound, 401, 402, 403
158			September 12, 2006	Bridgestone's Amended Initial Disclosures Pursuant to Rule 26(a)	Compound, 401, 402, 403
159			June 20, 2005	Bridgestone's Initial Disclosures Pursuant to Rule 26(a)	Compound, 401, 402, 403
160			September 29, 2005	Bridgestones' 1st Supp. Responses to Acushnet's 1st Interrogatories	Compound, 401, 402, 403
161			January 6, 2006	Bridgestones' 2nd Supp. Responses to Acushnet's 1st Interrogatories	Compound, 401, 402, 403
162			January 30, 2006	Bridgestones' 3rd Supp. Responses to Acushnet's 1st Interrogatories	Compound, 401, 402, 403
163			March 30, 2006	Bridgestones' 4th Supp. Responses to Acushnet's 1st Interrogatories (Nos. 10 and 23)	Compound, 401, 402, 403
164			May 1, 2006	Bridgestones' 5th Supp. Responses to Acushnet's 1st Interrogatories	Compound, 401, 402, 403
165			May 9, 2006	Bridgestones' 6th Supp. Responses to Acushnet's 1st Interrogatories	Compound, 401, 402, 403
166			June 28, 2006	Bridgestones' 7th Supp. Response to Acushnet's 1st Interrogatories	Compound, 401, 402, 403
167			July 14, 2006	Bridgestones' 8th Supp. Responses to Acushnet's 1st Interrogatories	Compound, 401, 402, 403

168			December 18, 2006	Bridgestones' 9th Supp. Responses to Acushnet's 1st Interrogatories (Nos. 1-28)	Compound, 401, 402, 403
169			July 11, 2005	Bridgestones' Responses to Acushnet's 1st Interrogatories	Compound, 401, 402, 403
170			January 17, 2006	Bridgestones' Responses to Acushnet's 2nd Interrogatories	Compound, 401, 402, 403
171			February 21, 2006	Bridgestones' Responses to Acushnet's 3rd Interrogatories	Compound, 401, 402, 403
172			September 11, 2006	Bridgestones' Responses to Acushnet's 4th Interrogatories (Nos. 45-53)	Compound, 401, 402, 403
173			December 18, 2006	Bridgestones' Responses to Acushnet's 5th Interrogatories (Nos. 54-60) and to Acushnet's 6th Interrogatories s (Nos. 61-66)	Compound, 401, 402, 403
174			December 18, 2006	Bridgestones' Supp. Responses to Acushnet's 2nd Interrogatories (Nos. 25-38)	Compound, 401, 402, 403
175			December 18, 2006	Bridgestones' Supp. Responses to Acushnet's 4th Interrogatories s (Nos. 46-53)	Compound, 401, 402, 403
176			January 20, 2007	Expert Report of Francis des Lynch	
177			January 20, 2007	Expert Report of John Jarosz	802, 805, 702, 403, 1006
178			January 20, 2007	Expert Report of Nick Price	802, 402, 403, 805, 702, 403
179			January 20, 2007	Expert Reports of Avraam Isayev	802, 805, 702, 403, 1006
180			January 20, 2007	Expert Reports of Dr. E. Bryan Coughlin	802, 805, 702, 403, 1006
181			January 20, 2007	Expert Reports of Edward M. Caulfield	802, 805, 702, 403, 1006
182			January 20, 2007	Expert Reports of John Calabria	802, 402, 403, 805, 702, 403, 1006
183			January 20, 2007	Expert Reports of Kim B. Blair	802, 402, 403, 805, 702, 403, 1006
184			January 20, 2007	Expert Reports of Larry C. Cadorniga	401, 402, 403, 802, 805, 702, 1006
185	AB 0048297	AB 0048309		Acushnet Financial Documents	105, 401, 402, 403

186	AB 0048320	AB 0048334		Acushnet Financial Documents	105
187	AB 0070061	AB 0070062		Pinnacle Team Meeting Minutes	802, 805, 401, 402
188	AB 0073770	AB 0073772		NXT Product Brief	802, 805, 105
189	AB 0084261	AB 0084266		Acushnet Japanese Sales	105, 401, 402, 403
190	AB 0084267	AB 0084417		Acushnet Financial Documents	105, 401, 402, 403
191	AB 0084296	AB 0084300		Acushnet Financial Documents	105, 401, 402, 403
192	AB 0084322	AB 00843223		Acushnet Financial Documents	105, 401, 402, 403
193	AB 0084344	AB 0084350		Acushnet Financial Documents	105, 401, 402, 403
194	AB 0084371	AB 0084399		Acushnet Financial Documents	105, 401, 402, 403
195	AB 0084400	AB 0084417		Acushnet Financial Documents	105, 401, 402, 403
196	AB 0084496	AB 0084500		Acushnet Financial Documents	105, 401, 402, 403
197	AB 0084538	AB 0084543		Acushnet Financial Documents	105, 401, 402, 403
198	AB 0084556	AB 0084561		Acushnet Financial Documents	105, 401, 402, 403
199	AB 0084605	AB 0084609		Acushnet Financial Documents	105, 401, 402, 403
200	AB 0084673	AB 0084693		Acushnet Financial Documents	105, 401, 402, 403
201	AB 0084694	AB 0084758		Acushnet Financial Documents	105, 401, 402, 403
202	AB 0084774	AB 0084778		Acushnet Financial Documents	105, 401, 402, 403
203	AB 0084943	AB 0084946		Acushnet Financial Documents	105, 401, 402, 403
204	AB 0085420	AB 0085428		Agreement	105, 401, 402, 403
205	AB 0085430	AB 0085499		Acushnet Financial Documents	105, 401, 402, 403
206	AB 0085430	AB 0085499		Acushnet Financial Documents	105, 401, 402, 403
207	AB 0085482	AB 0085483		Acushnet Financial Documents	105, 401, 402, 403
208	AB 0086248	AB 0086262		Acushnet Settlement	105, <b>401, 402, 403</b>
209	AB 0086263	AB 0086265		Agreement	105, <b>401, 402, 403</b>
210	AB 0086266	AB 0086268		Agreement	105, <b>401, 402, 403</b>
211	AB 0086270	AB 0086276		Acushnet License	105, <b>401, 402, 403</b>
212	AB 0086603				105

213	AB 0087773	AB 0087795		Acushnet License	105, 401, 402, 403
214	AB 0087859	AB 0087865		Acushnet Financial Documents	105, <b>401, 402, 403</b>
215	AB 0090062	AB 0090065		Acushnet Settlement	401, 402, 408
216	AB 0090066	AB 0090085		Acushnet Settlement	401, 402, 408
217	AB 0090086	AB 0090093		Acushnet License	401, 402, 408
218	AB 0112455	AB 0112456		Ball Report	105, 401, 402
219	AB 0112457	AB 0112458		Ball Report	401, 402, 105
220	AB 0112459	AB 0112460		Ball Report	105, 401, 402
221	AB 0112461	AB 0112462		Ball Report	105, 401, 402
222	AB 0112463	AB 0112464		Ball Report	105, 401, 402
223	AB 0113325	AB 0113337		Ball Report	105, 401, 402
224	AB 0113338	AB 0113341		Ball Report	105, 401, 402
225	AB 0113359	AB 0113362		Ball Report	105, 401, 402
226	AB 0113363	AB 0113377		Ball Report	105, 401, 402
227	BSP 004689	BSP 007418		Golf Data Tech Reports	Compound, 803, 901
228	BSP 008679	BSP 008871		NGF Analysis	Compound, 803, 901
229	BSP 036207	BSP 036214		Agreement	<b>Duplicate of PX 204</b>
230	BSP 242701	BSP 242768		Bridgestone Product Line Analysis	Compound, 901
231	BSP 242929	BSP 243216		Golf Ball Sales	Compound, 105
232	SB 12173	SB 12191		Acushnet Settlement	Compound, 105, <b>Incomplete Range, Otherwise Duplicate of PX 213</b>
233	SB 12192	SB 12198		Agreement	Compound, 105, <b>Duplicate of PX 204 and PX 229</b>
234	SB 12199	SB 12218		Acushnet Settlement	Compound, 105, <b>Duplicate of PX 216</b>
235				Bridgestone Corporation 2005 Annual Report.	105, 802, 805, 401, 402

236			Callaway Golf Company, SEC Form 10-K for the fiscal year ended December 31, 2005.	105, 802, 805, 401, 402
237			Callaway Golf Company, SEC Form 10-Q for the period ended March 31, 1998.	105, 802, 805, 401, 402
238			Fortune Brands, Inc., SEC Form 10-K for the fiscal year ended December 31, 2005.	105, 802, 805, 401, 402, 1006, 901
239			Bloomberg.	Bridgestone failed to adequately describe the exhibit or product.
240			Callaway Golf Co., SEC Form 8-K, Press Release, Callaway Golf Announces Acquisition of Top-Flite (June 30, 2003), available at <a href="http://ir.callawaygolf.com">http://ir.callawaygolf.com</a> (viewed January 15, 2007).	105, 802, 805, 901, 401, 402, 1006
241			Chuck Stogel, Brandweek (July 10, 2006), available at <a href="http://www.brandweek.com">http://www.brandweek.com</a> (viewed January 6, 2007).	802, 805, 401, 402, 901, 1006
242			Daniel Burns, DCF Analyses in Determining Royalty, Les Nouvelles (September 1995).	802,, 901, 401, 402, 1006, 805
243			Daniel M. McGavock, David A. Haas and Michael P. Patin, Licensing Practices, Business Strategy, and Factors Affecting Royalty Rates: Results of a Survey, 13 Licensing Law and Business Report N6 (March-April 1991).	802, 805, 901, 401, 402, 1006
244			<i>Exhibit Withdrawn</i>	
245			E. Michael Johnson, Mortally Wound-ed?, Golf Digest (June 2001), available at <a href="http://www.golfdigest.com">http://www.golfdigest.com</a> .	802, 805, 901, 401, 402, 1006
246			Federal Reserve Statistical Release Form H.15, Secondary Market, 3-month T-Bill Rate.	Bridgestone failed to adequately describe the exhibit.
247			Golf Pyramid of Influence.ppt.	Bridgestone failed to adequately describe the exhibit.

248				Gordon V. Smith and Russell L. Parr, Valuation of Intellectual Property and Intangible Assets (2nd ed. 1994).	802, 805, 901, 401, 402, 1006
249				Gordon V. Smith and Russell L. Parr, Valuation of Intellectual Property and Intangible Assets (3rd ed. 2000).	802, 805, 401, 402, 901, 1006
250				Jaime Diaz, Right on the SEAM - Titleist Pro V1, Golf Ball - Evaluation, Golf Digest (August 2001).	802, 805, 105, 901, 401, 402, 1006
251				John C. Jarosz, Considering Taxes in the Computation of Lost Business Profits, 25 Creighton L. Rev. 41 (1991).	802, 805, 401, 402, 901, 1006
252				Mark Seal, The Coming Golf Ball Wars - Golf Industry, Golf Digest (February 1999).	802, 805, 901, 401, 402, 1006
253				Paul M. Janicke, Contemporary Issues in Patent Damages, 42 Am. U. L.R. 691 (Spring 1993).	802, 805, 105401, 402, 901, 1006
254				Richard Razgaitis, Valuation and Pricing of Technology-Based Intellectual Property (2003).	802, 805, 401, 402, 901, 1006
255				Robert F. Reilly and Robert P. Schweih, Valuing Intangible Assets (1999).	802, 805, 901, 401, 402, 1006
256				Robert Goldscheider and Michael A. Epstein, Determining The Value Of Technology and Setting Royalty Rates, 4 J. Proprietary Rights N10 (October 1992).	802, 805, 401, 402, 901, 1006
257				Robert Goldscheider, John Jarosz and Carla S. Mulhern, Use of the 25 Percent Rule in Valuing IP, 37 Les Nouvelles N4 (December 2002).	802, 805, 401, 402, 1006, 901, <b>1002</b>
258				Robert Goldscheider, Litigation Backgrounder for Licensing, 29 Les Nouvelles N1 20 (March 1994).	802, 805, 401, 402, 1006, 901
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260				Shannon P. Pratt, Robert F. Reilly and Robert P. Schweih, Valuing a Business: The Analysis and Appraisal of Closely Held Companies (4th ed. 2000).	802, 805, 401, 402, 901, 1006



261				Shannon P. Pratt, Robert F. Reilly and Robert P. Schweiks, Valuing Small Businesses and Professional Practices (2nd ed. 1993).	"Not Produced;" 401, 402, 802, 805, 901, 1006
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263				Stephen A. Degnan and Corwin Horton, A Survey of Licensed Royalties, 32 Les Nouvelles N2 91 (June 1997).	802, 805, 401, 402, 901, 1006
264				Data from Daniel M McGavock, David A Haas, and Michael P Patin, Licensing Practices, Business Strategy, and Factors Affecting Royalty Rates: Results of a Survey, 13 Licensing Law and Business Report N6 (March-April 1991)	802, 805, 401, 402, 901, 1006
265				Data from Standard & Poor's Compustat database	"Not Produced;" 401, 402, 802, 805, 901, 1006
266				Data from Stephen Degnan and Corwin Horton, A Survey of Licensed Royalties, 32 Les Nouvelles N2 (June 1997)	802, 805, 401, 402, 901, 1006
267				Player rankings from <a href="http://www.pgatour.com/r/stats/2006/186_print.html">http://www.pgatour.com/r/stats/2006/186_print.html</a> (viewed January 8, 2007)	<b>401, 402, 403, 802, 805, 901, 1002, 1006</b>
268				RoyaltySource® Intellectual Property Database (see Jarosz Tab 34)	"Not Produced;" 401, 402, 802, 805, 901, 1006
269			January 22, 2007	B. Seal 2007 e-mail correspondence re: Meet and Confer	401, 402, 403, 802, 805
270			September 6, 2006	Facsimile and letter from B. Seal to B. White re: Acushnet's Recipe Formula	401, 402, 403, 802, 805
271			September 6, 2006	Facsimile and letter from B. Seal to B. White re: Acushnet's recipe formulas	401, 402, 403, 802, 805
272			March 10, 2006	Facsimile from M. Biswas to R. Masters forwarding Acushnet's Document Control Log	401, 402, 403, 802, 805
273			September 6, 2006	Letter from B. Seal to B. White re: Acushnet's recipe formulas	401, 402, 403, 802, 805
274			February 13, 2007	Letter from R. Stasio to B. White inspection and testing of golf balls	401, 402, 403, 802, 805

275			February 28, 2007	Letter from R. Stasio to B. White re: upcoming depositions	401, 402, 802, 805
276	AB 0118603	AB 0118709	March 7, 2007	Letter from D. Chase to R. Masters forwarding Bates range AB0118603 - AB 0118709 (11/04/03 deposition of David Lloyd Felker, Ph.D.	401, 402, 602, 802, 805, 403
277				Letter from B. Seal to R. Saliba re: golf ball inventory	802, 805, 401, 402, 403
278	AB 0085420	AB 0085428	March 29, 1991	Agreement between Bridgestone and Titleist	Duplicate of <b>PX 204</b>
279	AB 0086248	AB 0086262	October 6, 1989	Agreement between Acushnet and Polaris Parties	Duplicate of <b>PX 208</b>
280	AB 0086263	AB 0086265	September 4, 1980	Agreement between American Ball and Titleist	Duplicate of <b>PX 209</b>
281	AB 0086266	AB 0086268	January 11, 1991	Agreement between American Ball and Titleist	Duplicate of <b>PX 210</b>
282	AB 0086270	AB 0086276	January 1, 1999	License Agreement between Acushnet and Callaway Golf Ball Co.	Duplicate of <b>PX 211</b>
283	AB 0087773	AB 0087795	April 4, 2001	License Agreement between Acushnet and Callaway	Duplicate of <b>PX 213</b>
284	AB 0090062	AB 0090065	June 30, 2000	Settlement Agreement between Acushnet and Dunlop Maxfli Sports Corp.	401, 402, 408
285	AB 0090066	AB 0090085	August 5, 1998	Settlement Agreement between Spalding, Lisco and Acushnet	401, 402, 408
286	AB 0090086	AB 0090093	June 30, 2000	License Agreement between Acushnet and Dunlop Maxfli Sports Corp.	401, 402, 408
287	BSP036207	BSP036213	March 29, 2001	Agreement between Bridgestone and Titleist	Duplicate of <b>PX 204, PX 229, PX 233</b>
288	AB 0015274	AB 0015290	10/00/02	DT So/Lo Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
289	AB 0015291	AB 0015303	09/00/04	DT So/Lo Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
290	AB 0015304	AB 0015320	May 23, 2003	Pinnacle Exception Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
291	AB 0015321	AB 0015337	08/00/05	Pinnacle Exception (2005) Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
292	AB 0015338	AB 0015355	October 24, 2002	NXT Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
293	AB 0015356	AB 0015373	10/00/04	NXT Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105

294	AB 0015374	AB 0015390	06/00/01	NXT Tour Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
295	AB 0015391	AB 0015407	10/00/02	NXT Tour Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
296	AB 0015408	AB 0015429	09/00/04	NXT Tour Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
297	AB 0015430	AB 0015449	2003-2004	◀●Pro V1 392●▶ Manufacturing Guidelines	401, 402, 802, 805, 403, 105
298	AB 0015450	AB 0015470	12/00/00	Pro V1 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
299	AB 0015471	AB 0015497	10/00/04	Pro V1x-332 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
300	AB 0015498	AB 0015518	2000	Pro V1 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
301	AB 0015498	AB 0015541	12/00/00	Pro V1 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
302	AB 0015519	AB 0015541	2005-2006	◀Pro V1-392▶ Manufacturing Guidelines	401, 402, 802, 805, 403, 105
303	AB 0015542	AB 0015562	11/00/02	Pro V1 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
304	AB 0015563	AB 0015587	12/00/02	Pro V1x 332 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
305	AB 0015588	AB 0015617	12/00/02	Pro V1x 332 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
306	AB 0036381	AB 0036405	09/00/04	NXT Tour Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
307	AB 0038212	AB 0038232	08/00/00	Veneer (Pro V1-392) Manufacturing Guidelines	401, 402, 802, 805, 403, 105
308	AB 0038279	AB 0038299	12/00/00	Pro V1 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
309	AB 0038341	AB 0038361	11/00/02	Pro V1 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105

310	AB 0038532	AB 0038560	11/00/04	Pro V1 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
311	AB 0038793	AB 0038811	2000	Pro V1 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
312	AB 0056201	AB 0056217	September 12, 2003	Pinnacle Exception Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
313	AB 0086277	AB 0086304	01/00/06	Pro V1 392 (Japan) Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
314	AB 0086305	AB 0086331	01/00/06	Pro V1 x 332 (Japan) Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
315	AB 0086332	AB 0086350	01/00/06	Titleist NXT (Japan) Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
316	AB 0086351	AB 0086372	01/00/06	NXT Tour (Japan) Manufacturing Guidelines	401, 402, 802, 805, 403, 105
317	AB 0086373	AB 0086385	01/00/06	Titleist DT So Lo (Japan) Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
318	AB 0086386	AB 0086402	01/00/06	Pinnacle Exception (2005) (Japan) Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
319	AB 0086603	AB 0086630	09/00/01	Pro V1 * 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
320	AB 0111726	AB 0111753	08/00/01	Dual Core Veneer Manufacturing Guidelines	401, 402, 802, 805403, 105
321	AB 0111755	AB 0111782	09/00/01	Pro V1 * 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
322	AB 0111784	AB 0111803	08/00/00	Veneer (Pro V1-392) Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
323	AB 0111826	AB 0111844	10/00/00	Veneer (Pro V1-392) Manufacturing Guidelines Manual	401, 402, 802, 805, 403, 105
324	AB 0111963	AB 0111990	03/00/02	Pro V1 * 392 Manufacturing Guidelines	401, 402, 802, 805, 403, 105
325	AB 30829				401, 402, 901
326	BSP 096734	BSP 096755			901

327				Box from Titleist Pro V1x Golf Balls (Felker Depo. Ex. 23)	<b>401, 402, 802, 805, 901</b>
328			August 24, 2001	Callaway Golf Company, Time Survey, R&D Tax Credit Study, Year Ended 2000 (Felker Depo. Ex. 2)	<b>106, 401, 402, 403, 802, 805, 901</b>
329				Compression by Another Other Name, <i>Science and Golf IV</i>	401, 402, 802, 805
330				Curriculum Vitae of Kevin Jones	802, 805
331				Sidestamp list (W. Burke Depo. Ex. 5)	<b>401, 402, 403, 602, 802, 1006</b>
332	AB 0000001	AB 0000011	November 6, 1998	Meeting Report	802, 805
333	AB 0000124	AB 0000130	2003-2004	Marketing Strategy for DT So/Lo	401, 402, 802, 805
334	AB 0000206	AB 0000231		Presentation - The Road To Our Present Day	
335	AB 0000233	AB 0000235	August 6, 2004	Handwritten letter from H. Boehm to S. Tomita	401, 402, 408
336	AB 0000538		February 1, 2004	S. Tomita 2004 e-mail correspondence	<b>105, 401, 402, 408, 802, 805</b>
337	AB 0000682	AB 0000686	February 11, 2004	S. Tomita 2004 e-mail correspondence	802, 805
338	AB 0000735	AB 0000737	January 16, 2003	H. Boehm 2003 e-mail correspondence	<b>105, 401, 402, 408, 802, 805</b>
339	AB 0000780	AB 0000782	January 15, 2003	H. Boehm 2003 e-mail correspondence	
340	AB 0000790	AB 0000792	February 27, 2003	S. Tomita 2003 e-mail correspondence	
341	AB 0000796		June 6, 2003	H. Boehm 2003 e-mail correspondence	<b>105, 401, 402</b>
342	AB 0000797		August 21, 2003	S. Tomita 2003 e-mail correspondence	401, 402, 408, 802, 805
343	AB 0000873		March 8, 2005	E-mail correspondence	401, 402, 403, 802, 805
344	AB 0000880	AB 0000881	March 6, 2000	B. Morgan 2000 e-mail correspondence	802, 805, 401, 402
345	AB 0002254	AB 0002258	June 30, 1998	D. Ladd 1998 e-mail correspondence	802, 805
346	AB 0004647	AB 0004658		Testing information	802, 805
347	AB 0004727		August 3, 2000	J. Dalton 2000 e-mail correspondence	802, 805, 401, 402
348	AB 0004805		June 3, 2003	J. Dalton 2003 e-mail correspondence	802, 805
349	AB 0004806		June 2, 2003	H. Boehm 2003 e-mail correspondence	802, 805
350	AB 0004810	AB 0004811	August 25, 2003	J. Dalton 2003 e-mail correspondence	802, 805
351	AB 0004825	AB 0004827	October 25, 2004	J. Dalton 2004 e-mail correspondence	401, 402, 403, 802, 805

352	AB 0004830	AB 0004832	May 2, 2004	Formula guidelines	
353	AB 0004833		June 13, 2005	C. Cavallaro 2005 e-mail correspondence	802, 805, 401, 402
354	AB 0004834		March 8, 2005	B. Morgan 2005 e-mail correspondence	
355	AB 0004836	AB 004837	March 3, 2005	B. Morgan 2005 e-mail correspondence	802, 805
356	AB 0004839	AB 0004840		Ball Properties	802, 805, 401, 402
357	AB 0011632	AB 0011637	January 11, 2000	E-mail correspondence re: Veneer Platform Team Minutes	802, 805
358	AB 0011789	AB 0011790	April 25, 2003	C. Cavallaro 2003 e-mail correspondence	802, 805, 401, 402
359	AB 0012320	AB 0012321	March 6, 2000	B. Morgan 2000 e-mail correspondence	802, 805, 401, 402
360	AB 0015272	AB 0015273		Surlyn Recipe Formulas	Compound (first page 401, 402)
361	AB 0016780	AB 0016806	08/00/02	B. Morgan - Tour Distance SF and The Next Generation Product	
362	AB 0016807	AB 0016827	June 22, 1905	Partners Conference - Fall 2000	802, 805
363	AB 0016828	AB 0016855	01/00/01	Sales Meeting	<b>105, 401, 402</b>
364	AB 0016886	AB 0016970	07/00/01	July 2001 Sales Meeting	802, 805
365	AB 001692		October 23, 1998	Titleist and Foot-Joy Worldwide Analytical Services Results	401, 402, 802, 805
366	AB 0017301		January 2, 2001	E-mail correspondence	<b>401, 402</b>
367	AB 0017318	AB 0017320	March 19, 2001	B. Morgan 2001 e-mail correspondence	802, 805
368	AB 0017328		April 12, 2001	B. Morgan 2001 e-mail correspondence	<b>105, 401, 402</b>
369	AB 0017363	AB 0017366	May 17, 2004	K. Harris 2004 e-mail correspondence	802, 805
370	AB 0017367	AB 0017380	April 19, 2004	M. Rajagopalan 2004 e-mail correspondence	802, 805
371	AB 0017417	AB 0017419	January 18, 1996	Titleist and Foot-Joy Worldwide Inter-Office Correspondence re: Meeting Notes 1/16/96	802, 805
372	AB 0017440	AB 0017450	February 21, 1996	New Product Directive, Project X Technology	802, 805, 401, 402
373	AB 0017451	AB 0017455		B. Morgan - Bill's Update for The Product Strategy Team	802, 805, 401, 402
374	AB 0017456	AB 0017458		B. Morgan e-mail correspondence	802, 805, 401, 402
375	AB 0017459	AB 0017463	May 10, 1996	New Product Directive Project X Technology	802, 805, 401, 402
376	AB 0017474	AB 0017476		B. Morgan memo re: Layered Covered Product Strategy Considerations	802, 805, 401, 402

377	AB 0017483		July 3, 1996	The Evolution of the LOW SPIN Project X Balls	802, 805, 401, 402
378	AB 0017506	AB 0017510		BDouble Cover Product Strategy	802, 805, 401, 402
379	AB 0017575	AB 0017582	March 4, 1999	J. Dalton 1999 e-mail correspondence	802, 805, 401, 402, 403
380	AB 0017575	AB 0017576	March 3, 1999	Veneer Product Platform Team Minutes	802, 805, 401, 402, 403
381	AB 0017579	AB 0017580	March 4, 1999	B. Morgan 1999 e-mail correspondence	802, 805, 401, 402, 403
382	AB 0017622	AB 0017626	February 29, 2000	Titleist and Foot-Joy Inter-Office Correspondence re: Golf Ball Product Development Team Meeting - 02/28/00	802, 805, 401, 402
383	AB 0017646	AB 0017648	April 4, 2000	Acushnet inter-office correspondence re: product development team meeting	802, 805, 401, 402
384	AB 0017654	AB 0017657	April 28, 2000	C. Cavallaro 2000 e-mail correspondence	802, 805, 401, 402
385	AB 0017671	AB 0017673	May 25, 2000	Acushnet inter-office correspondence re: product development team meeting	802, 805, 401, 402
386	AB 0017674	AB 0017686	May 30, 2000	B. Morgan 2000 e-mail correspondence	Compound, 802, 805, 403, 401, 402
387	AB 0017677	AB 0017679	May 30, 2000	E. Abbrain 2000 e-mail correspondence	Compound, 401, 402, 802, 805
388	AB 0017732	AB 0017745	September 22, 2003	J. Ichinose 2003 e-mail correspondence	Compound, 408, 401, 402
389	AB 0017960	AB 0017961	November 15, 1998	Letter from S. Tomita to H. Boehm	
390	AB 0017962		January 5, 1999	Letter from S. Tomita to H. Boehm	
391	AB 0017963		January 19, 1999	Letter from H. Boehm to S. Tomita	
392	AB 0017964		April 29, 1999	Model, distance and episode information	802, 805, 401, 402, 602
393	AB 0017965	AB 0017984		Operating Procedure For Durometer Hardness Measurements	
394	AB 0017985	AB 0017986	July 6, 1999	Memo from J. Ichinose to H. Boehm re: letter from S. Tomita	
395	AB 0017989	AB 0017991	August 7, 1999	Memo from H. Boehm to S. Tomita re: cross license, episode, HP2 distance	
396	AB 0030335	AB 0030336	April 1, 2005	Doug Jones - Exhibit 14 Chart re: Pro V1x Mantle Red	Incomplete, 802, 805, 403
397	AB 0034583	AB 0034829	October 1, 2002	Improved Pro VI - I	Compound, 802, 805, 401, 402, 403



398	AB 0034804	AB 0034805	September 3, 2002	C. Cavallaro 2002 e-mail correspondence	802, 805, 401, 402, 403
399	AB 0034830	AB 0035195		Improved Pro VI - II	Compound, 802, 805, 401, 402, 403
400	AB 0035156	AB 0035158	October 31, 2002	Jeff Dalton - Exhibit 11 Subj: SBR 1502 Rubber	802, 805, 401, 402
401	AB 0035160	AB 0035170	October 10, 2002	Mixer 2 Batch Report	
402	AB 0035659		August 22, 2002	Troy Lester - Exhibit 14 E-mail correspondence	802, 805, 401, 402
403	AB 0035709	AB 0035712		Email -- ZnPCTP Usage for 2002	Compound, 802, 805, 401, 402
404	AB 0035748	AB 0035749	September 25, 2002	M. Jordan 2002 e-mail correspondence	802, 805
405	AB 0035781	AB 0035783	October 4, 2002	M. Costa 2002 e-mail correspondence	802, 805
406	AB 0035789		October 4, 2002	E-mail correspondence	802, 805, 401, 402, 403
407	AB 0035813		October 6, 2002	E-mail correspondence	802, 805, 401, 402
408	AB 0035851		October 18, 2002	K. Harris 2002 e-mail correspondence	802, 805, 401, 402, 403
409	AB 0035869	AB 0035872	October 23, 2002	M. Jordan 2002 e-mail correspondence	802, 805
410	AB 0036017		November 8, 2002	B. Williams 2002 e-mail correspondence	802, 805, 401, 402, 403
411	AB 0036060	AB 0036061	January 29, 2003	P. Elliott 2003 e-mail correspondence	
412	AB 0036095		September 8, 2003	B. Lacy 2003 e-mail correspondence	802, 805
413	AB 0036142		July 9, 2001	P. Elliott e-mail correspondence	802, 805, 401, 402
414	AB 0036205		June 22, 2004	M. Sullivan 2004 e-mail correspondence	Incomplete, 802, 805, 401, 402, 403
415	AB 0036260	AB 0036262	August 25, 2004	F. Rizzotti 2004 e-mail correspondence	802, 805
416	AB 0036290	AB 0036292	September 7, 2004	M. Jordan 2004 e-mail correspondence	802, 805
417	AB 0036412		October 6, 2004	P. Elliott 2004 e-mail correspondence	Incomplete, 802, 805, 401, 402, 403
418	AB 0036485	AB 0036489	November 9, 2004	E-mail correspondence	802, 805, 401, 402, 403
419	AB 0036865		November 12, 2002	J. Dalton 2002 e-mail correspondence	802, 805, 401, 402
420	AB 0036867	AB 0036869	October 28, 2002	J. Dalton 2002 e-mail correspondence	802, 805



421	AB 0036890	AB 0036891	September 25, 2002	M. Jordan 2002 e-mail correspondence	802, 805
422	AB 0036923		October 7, 2002	New Product Implementation	
423	AB 0036925		May 2, 2004	Formula Information	802, 805
424	AB 0038208	AB 0038209	August 29, 2000	B. Morgan 2000 e-mail correspondence	802, 805
425	AB 0038429	AB 0038424	September 14, 2004	E-mail correspondence	802, 805, 401, 402
426	AB 0038490	AB 0038492	November 10, 2004	J. Dalton 2004 e-mail correspondence	802, 805, 401, 402
427	AB 0038525	AB 0038526	January 21, 2005	C. Cavallaro 2005 e-mail correspondence	802, 805
428	AB 0038605	AB 0038606	November 16, 2004	M. Jordan 2004 e-mail correspondence	802, 805, 401, 402
429	AB 0038617	AB 0038619	June 17, 2002	C. Cavallaro 2002 e-mail correspondence	Compound, 802, 805, 401, 402, 403
430	AB 0038620	AB 0038624	May 12, 2003	DT So/Lo ZnPCrTP Reduction - Experiment #1	Compound, 802, 805, 401, 402, 403
431	AB 0038626		May 14, 2003	C. Cavallaro 2003 e-mail correspondence	802, 805, 401, 402
432	AB 0038631	AB 0038633	May 28, 2003	C. Cavallaro 2003 e-mail correspondence	802, 805, 401, 402, 403
433	AB 0038638		August 18, 2003	B. Fletcher 2003 e-mail correspondence	802, 805, 401, 402
434	AB 0038682	AB 0038683	November 4, 2003	C. Cavallaro 2003 e-mail correspondence	802, 805
435	AB 0038777	AB 0038778	June 1, 2003	Lab Manufactured	Incomplete, 802, 805
436	AB 0039156	AB 0039193	June 27, 1905	Titleist Summer Sales Meeting	802, 805, 401, 402
437	AB 0039307	AB 0039308		New Titleist Pro V1x Product Preview	
438	AB 0044745	AB 0044834	October 28, 1998	D. Ladd 1998 e-mail correspondence and Trans-Center Multi-Core, Round 2	Compound, 802, 805, 401, 402
439	AB 0045323	AB 0045326	August 23, 2001	D. Martin 2001 e-mail correspondence	802, 805, 401, 402
440	AB 0045333		October 5, 2001	D. Jones 2001 e-mail correspondence	802, 805, 401, 402
441	AB 0045334		October 12, 2001	M. Rajagopalan 2001 e-mail correspondence	802, 805, 401, 402
442	AB 0045343	AB 0045344	November 9, 2001	M. Rajagopalan 2001 e-mail correspondence	802, 805, 401, 402
443	AB 0045371	AB 0045372	September 18, 2002	M. Rajagopaen 2002 e-mail correspondence	802, 805
444	AB 0045383	AB 0045384	October 10, 2002	E. Isaac 2002 e-mail correspondence	802, 805
445	AB 0045920		January 15, 2002	Rhein Chemie Masterbatch Meeting 1/15-1/16/02	802, 805
446	AB 0048227	AB 0048251	July 4, 2004	Titleist and Foot-Joy Worldwide Product Analysis	Incomplete

447	AB 0048310	AB 0048319	December 31, 2004	Titleist and Foot-Joy Worldwide Product Analysis	Incomplete
448	AB 0050764	AB 0050768	April 22, 2002	B. Morgan 2002 e-mail correspondence	802, 805
449	AB 0050859	AB 0050865	July 9, 2004	J. Dalton 2004 e-mail correspondence	802, 805
450	AB 0050890	AB 0050895	February 17, 2004	J. Dalton 2004 e-mail correspondence	802, 805
451	AB 0050954	AB 0050958	January 6, 2004	E-mail correspondence	<b>401, 402</b> , 802, 805
452	AB 0050964	AB 0050968	November 19, 2003	J. Dalton 2003 e-mail correspondence	<b>401, 402</b> , 802, 805
453	AB 0051027		March 11, 2003	D. Jones 2003 e-mail correspondence	802, 805, 401, 402
454	AB 0051106	AB 0051110	April 22, 2002	B. Morgan 2002 e-mail correspondence	802, 805, 401, 402
455	AB 0051414		March 6, 2002	E-mail correspondence	802, 805, 401, 402
456	AB 0051434	AB 0051435	December 6, 2001	B. Morgan 2001 e-mail correspondence	Compound, 802, 805
457	AB 0051527		January 23, 2003	H. Boehm handwritten notes	802, 805, 401, 402, 408
458	AB 0051982	AB 0051984	November 8, 1995	Titleist and Foot-Joy Worldwide Inter-Office Correspondence re: Meeting Notes 10/30/95 and 11/06/95	401, 402, 802, 805
459	AB 0051993	AB 0052003	December 22, 1999	H. Boehm Interoffice Correspondence re: Golf Ball Product Development Team Meeting	401, 402, 802, 805
460	AB 0052014	AB 0052040	August 25, 2000	Acushnet Inter-Office Correspondence re: Golf Ball Product Development Team Meeting, 08/24/00	401, 402, 802, 805
461	AB 0052050		August 13, 2001	E-mail correspondence	802, 805, 401, 402
462	AB 0052058	AB 0052046	February 9, 2001	V Series Project Work	Incomplete, 401, 402
463	AB 0059107	AB 0059111	September 20, 2004	G. Sine 2004 e-mail correspondence	802, 805
464	AB 0071363	AB 0071364	March 3, 2005	B. Morgan e-mail correspondence	802, 805, 401, 402
465	AB 0074807	AB 0074808	June 4, 2003	J. Dalton 2003 e-mail correspondence	802, 805, 401, 402
466	AB 0074845	AB 0074846	June 20, 2003	J. Dalton 2003 e-mail correspondence	802, 805, 401, 402
467	AB 0074886	AB 0074887	June 26, 2003	J. Dalton 2003 e-mail correspondence	802, 805, 401, 402
468	AB 0074943	AB 0074944	July 15, 2003	D. Jones 2003 e-mail correspondence	802, 805
469	AB 0079724	AB 0079838		1993 Sales Meeting	

470	AB 0080234	AB 0080238	March 28, 1995	Titleist and Foot-Joy Worldwide Inter-Office Correspondence re: 1995/1996 Golf Ball Product Line/Meeting Notes of 03/16/95	
471	AB 0080254	AB 0080259	February 14, 1996	Titleist and Foot-Joy Worldwide Inter-Office Correspondence re: Golf Ball New Product Team Meeting	Compound, 802, 805, 401, 402
472	AB 0080297	AB 0080298	July 24, 1996	Titleist and Foot-Joy Inter-Office Correspondence re: Urethane Veneer Ball Update	802, 805
473	AB 0080308	AB 0080329	07/00/96	Titleist Summary Sales Meeting	Compound, 802, 805, 401, 402
474	AB 0080347	AB 0080349	July 24, 1997	B. Morgan 1997 e-mail correspondence	802, 805, 401, 402
475	AB 0080355	AB 0080356	May 30, 2000	E. Abbrain 2000 e-mail correspondence	802, 805, 401, 402
476	AB 0080681		October 20, 1998	B. Morgan 1998 e-mail correspondence	802, 805, 401, 402
477	AB 0080689		October 20, 1998	J. Dalton 1998 e-mail correspondence	802, 805, 401, 402
478	AB 0080734	AB 0080736	September 1, 1998	S. Gosetti 1998 e-mail correspondence	802, 805, 401, 402
479	AB 0082612	AB 0082616		Chart re: statistics	
480	AB 0082617	AB 0082621		Chart re: statistics	
481	AB 0082660	AB 0082667	01/00/05	Golf Ball Sales, Off Course Shops	802, 805, 401, 402, 403, 901
482	AB 0082668	AB 0082675	01/00/05	Golf Ball Sales, On Course Shops	802, 805, 401, 402, 403, 901
483	AB 0083288	AB 0083294	March 31, 2002	Golf Ball Sales Report	802, 805, 401, 402, 403, 901
484	AB 0084670	AB 0084693	December 31, 2000	Acushnet Statement of Income as of Dec. 31, 2000	Duplicate Compound, 401, 402, 403
485	AB 0084930	AB 0084942	December 31, 2004	Titleist and Foot-Joy Worldwide Product Analysis	401, 402, 403
486	AB 0084954	AB 0084956	February 2, 2005	Titleist and Foot-Joy Worldwide Product Analysis	401, 402, 403
487	AB 0085217	AB 0085419	June 23, 1905	Titleist catalog	
488	AB 0087054	AB 0087068	December 6, 2001	B. Morgan 2001 e-mail correspondence	Compound, 802, 805
489	AB 0087059	AB 0087064	June 20, 2002	Zn-PCTP In The Vstar Outer Core	802, 805
490	AB 0087077	AB 0087083	September 16, 2002	J. Dalton 2002 e-mail correspondence	802, 805, 401, 402, 403

491	AB 0087393	AB 0087394		Improved Pro VI and Pro VI Star	802, 805, 401, 402, 403
492	AB 0087432	AB 0087433	October 1, 2001	C. Cavallaro 2001 e-mail correspondence	802, 805, 401, 402, 403
493	AB 0087859	AB 0087865	December 31, 2000	Acushnet's Income Statements for 12/31/00 thru 12/31/06	Compound, 401, 402, 403
494	AB 0088363	AB 0088365	01/00/04	Ball Manufacturing Information by Category	401, 402, 802, 805
495	AB 0088826	AB 0088827	September 25, 2003	Letter from W. Burke to C. Omtvedt re: Acushnet strategic plan	802, 805, 401, 402
496	AB 0088838	AB 0088857	February 2, 2004	Letter from W. Burke to C. Omtvedt re: highlights of 2004-2006 strategic plan for Acushnet	Compound, 802, 805, 401, 402
497	AB 0088869	AB 00088870		Signature page by W. Burke and 9/24 Forecast	Incomplete, 802, 805, 401, 402
498	AB 0088880	AB 0088888	February 2, 2004	Letter from D. Shenk to C. Omtvedt re: 2002 Financial Forecast	802, 805, 401, 402
499	AB 0089012	AB 0089014	December 16, 2004	P. Elliott 2004 e-mail correspondence	802, 805, 401, 402
500	AB 0089017		December 14, 2004	K. Welchman 2004 e-mail correspondence	802, 805, 401, 402
501	AB 0089902	AB 0089903	August 18, 2005	Price and Policy Memo	401, 402, 802, 805
502	AB 0089904	AB 0089905	August 18, 2005	Titleist Price and Policy PP06-03 - Golf Balls	401, 402, 802, 805
503	AB 0089913	AB 0089914	July 1, 2005	Titleist Price and Policy PP06-07 - Golf Balls	401, 402, 802, 805
504	AB 0090017		September 1, 2005	Titleist On Course Exclusive Stocking Partners Program 2005/2006	401, 402, 802, 805
505	AB 0091229	AB 0091236	April 29, 1993	Titleist and Foot-Joy Intra-Company Correspondence re: C.O.R. Results - Wilson Ultra Tour Balata	
506	AB 0110901	AB 0110910	October 29, 2001	Intra-Company Correspondence re: Manufacturing Review Committee Minutes	
507	AB 0111133	AB 0111135	October 7, 2004	Acushnet Intra-Company Correspondence re: MRC Meeting Minutes - 10/06/04	802, 805
508	AB 0111146	AB 0111153	January 15, 2004	MRC Meeting Minutes	Incomplete, 802, 805, 401, 402
509	AW 334	AW 337		Arnold Worldwide Document	Incomplete, 802, 805
510	AW000314	AW000317	August 8, 2001	B. Harwood 2001 e-mail correspondence	802, 805, 901, 401, 402, 403

511	AW000334	AW000336	March 27, 2002	R. DeMello 2002 e-mail correspondence	802, 805, 901, 401, 402, 403
512	AW000341	AW000344	March 27, 2002	R. DeMello 2002 e-mail correspondence	802, 805, 901, 401, 402, 403
513	AW000345	AW000360	April 1, 2002	R. DeMello 2002 e-mail correspondence	802, 805, 901, 401, 402, 403
514	AW001292	AW001375	June 28, 1905	Titleist Golf Ball Business Review & Plans	802, 805
515	AW002157	AW002159	January 26, 1999	Arnold Advertising - Strategy Platform - Titleist	802, 805, 401, 402, 403
516	AW002707	AW002737	April 14, 2005	K. Miller 2005 e-mail correspondence	802, 805, 401, 402
517	AW002866	AW002867	April 17, 2003	B. Harwood 2003 e-mail correspondence	802, 805, 401, 402
518	AB 38532	AB 38560			105, 401, 402, 403, 802, 805
519	AB 38534	AB 38535			105, 401, 402, 403, 802, 805, 1006
520	AB 54955	AB55142	November 1, 1998	RPA 2000 Operators Manual	
521	BSP 96734	BSP 96755			Incomplete, 802, 805, 901
522	BSP 97180	BSP 97184			Incomplete, 802, 805, 901
523	LAN 0024				802, 805
524				Isayev Exhibit 1 - Resume of Avraam Isayev	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902
525				Isayev Exhibit 2 - Table Mooney of Viscosity Various Polybutadienes - BR 18 & CB 23	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902
526				Isayev Exhibit 3 - Measure Loss Tangents and Calculate Resilence Index for BR 18 on RPA 2000	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902

527			Isayev Exhibit 4 - Measure Loss Tangents and Calculate Resilience Index for BR 18 on APA 2000	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902
528			Isayev Exhibit 5 - Measure Loss Tangents and Calculate Resilience Index for CB 23 on RPA 2000	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902
529			Isayev Exhibit 6 - Measure Loss Tangents and Calculate Resilience Index for CB 23 on APA 2000	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902
530			Isayev Exhibit 7 - Weight and Number Average Molecular Weight of BR 18 (BR 18 JSR Lot# 830314-10993)	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902
531			Isayev Exhibit 8 - Invalidity Claim Charts ('705, '872, '154)	802, 805, 1006, 401, 402, 403, 602, 702, 805, 901, 902
532			U.S. Patent No. 6,336,872	802, 805, 901
533			U.S. Patent No. 6,319,154	802, 805, 901
534			Coughlin Exhibit A - Curriculum Vitae E.Bryan Coughlin	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
535			Coughlin Exhibit B - Report of Documents Reviewed	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
536			Coughlin Exhibit C - Report of Analysis of CB 23	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
537			Coughlin Exhibit D - CB 23 Viscosity - 5 wt% Solution in Toluene @ 25 C	802, 805, 401, 402, 403, 602, 702, 805, 901, 902, 1006
538		1/04/2007	Coughlin Exhibit E - THF GPS50.plw Brad Buna23	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
539			Coughlin Exhibit F - Shell 1220 Viscosity - 5 wt% Solution in Toluene @ 25 C	802, 805, 401, 402, 403, 602, 702, 805, 901, 902, 1006

540			Coughlin Exhibit G - DuPont Polymer Modifiers - Fusabond grafted resins <a href="http://www.dupont.com/industrial-polymers/plastics/polymers/fusabond.html">http://www.dupont.com/industrial-polymers/plastics/polymers/fusabond.html</a>	Compound Exhibit, 401, 402, 403
541		Nov 2004	Coughlin Exhibit H - DuPont Nucrel 960 Data Sheet Doc. Ref. x5412z8d.pdf	401, 402, 802, 805, 403
542		2006	Coughlin Exhibit H - DuPont Nucrel acid copolymer resigns	403, 802, 805, 401, 402
543		1/16/2007	Opening Expert Report of Edward Caulfield	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
544			Caulfield Exhibit 1 - Resume of Edward Caulfield	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
545		1/3/2007	Caulfield Exhibit 2 - File Material (Materials Reviewed and Considered)	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
546			Caulfield Exhibit 3 - Test Standards	Compound
547			Caulfield Exhibit 4 - Gold Ball Testing Protocols: General Instructions	105, 802, 805, 401, 402, 403, 602, 702, 805, 901, 902
548			Caulfield Exhibit 5 - Gold Ball Testing Protocols: Protocol for Specific Gravity of Golf Ball Covers, Intermediate Layers and Cores	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
549			Caulfield Exhibit 6 - Gold Ball Testing Protocols: Protocol for Rebound	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
550			Caulfield Exhibit 7 - Gold Ball Testing Protocols: Protocol for Ball and Core Compression Under 100kg Load	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
551			Caulfield Exhibit 8 - Gold Ball Testing Protocols: Protocol for Thickness Measurement of Golf Ball Covers and Intermediate Layers	105, 802, 805, 401, 402, 403, 602, 702, 805, 901, 902
552			Caulfield Exhibit 9 - Gold Ball Testing Protocols: Protocol for Core Hardness and Diameter Measurements	105, 802, 805



553				Caulfield Exhibit 10 - Gold Ball Testing Protocols: Protocol for Intermediate Layer Hardness Measurements	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
554				Caulfield Exhibit 11 - Gold Ball Testing Protocols: Protocol for Cover Hardness (Acushnet Prepared Plaques)	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
555				Caulfield Exhibit 12 - Gold Ball Testing Protocols: Protocol for Cover Layer Hardness Measurements (Packer Engineering Prepared Plaques)	802, 805, 401, 402, 403, 602, 702, 805, 901, 902
556				Caulfield Exhibit 13 - Table I Specific Gravity Results Pro V1x, Pro V 1 and Pro V 1 Star	802, 805, 401, 402, 403, 602, 702, 805, 901, 902, 1006
557				Caulfield Exhibit 14 - Table II Core Rebound Results Pro V1x, Pro V 1 NXT Tour, NXT and DT So/lo	802, 805, 401, 402, 403, 602, 702, 805, 901, 902, 1006
558				Caulfield Exhibit 15 - Table III Compression - Distortion Under 100kg Load NXT Tour, NXT, DT So/lo and Pinnacle Exception	802, 805, 401, 402, 403, 602, 702, 805, 901, 902, 1006
559				Caulfield Exhibit 16 - Table IV Cover and Intermediate Layer Thickness Results Pro V1x, Pro V 1 and Pro V 1 Star	105, 802, 805, 401, 402, 403, 602, 702, 805, 901, 902, 1006
560				Caulfield Exhibit 17 - Table V Cover Thickness Results NXT Tour, NXT, DT So/lo and Pinnacle Exception	802, 805, 401, 402, 403, 602, 702, 805, 901, 902, 1006
561				Caulfield Exhibit 18 - Table VI Core Hardness Results (JIS C) Pro V1, Pro V1 Star, NXT, DT So/lo and Pinnacle Exception	802, 805, 401, 402, 403, 602, 702, 805, 901, 902, 1006
562				Caulfield Exhibit 19 - Table VII Pro V1x Core Hardness Gradient Results (JIS C)	802, 805, 401, 402, 403, 602, 702, 805, 901, 902, 1006
563				Caulfield Exhibit 20 - Table VIII Pro V1 Core Hardness Gradient Results (JIS C)	105, 802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006



564			Caulfield Exhibit 21 - Table IX Intermediate Layer (IML) Hardness Results (Packer Engineering Prepared Plaques) Pro V1x, Pro V 1 and Pro V 1 Star	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
565			Caulfield Exhibit 22 - Table X Core Hardness Results (Acushnet Prepared Plaques) NXT Tour, NXT, DT So/lo	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
566			Caulfield Exhibit 23 - Table XI Core Hardness Results (Packer Engineering Prepared Plaques) NXT Tour, NXT, DT So/lo and Pinnacle Exception	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
567			Caulfield Exhibit 24 - Table XII Ball Diameter Results Pro V1x, Pro V1, Pro V1 Star, NXT Tour, NXT, DT So/lo and Pinnacle Exception	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
568			Caulfield Exhibit 25 - Table XIII Core Diameter Results Pro V1x, Pro V1, Pro V1 Star, NXT Tour, NXT, DT So/lo and Pinnacle Exception	802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
569			Caulfield Exhibit 26 - Average Cover Thickness Distribution (Various Pro V Models)	105, 802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
570			Caulfield Exhibit 27 - Average Intermediate Layer Thickness Distribution (Various Models)	105, 802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
571			Caulfield Exhibit 28 - Average Cover Thickness Distribution (Various NXT, DT So/lo & Pinnacle Exception Models)	105, 802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
572			Caulfield Exhibit 29 - Core Hardness Difference Distribution (Various Models)	105, 802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
573			Caulfield Exhibit 30 - Core Hardness Gradient Pro V1x	105, 802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
574			Caulfield Exhibit 31 - Core Hardness Gradient Pro V1x	105, 802, 805, 401, 402,

					403, 602, 702, 802, 805, 901, 902, 1006
575				Caulfield Exhibit 32 - Core Hardness Gradient Pro V1	105, 802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
576				Caulfield Exhibit 33 - Core Hardness Gradient Pro V1	105, 802, 805, 401, 402, 403, 602, 702, 802, 805, 901, 902, 1006
577				Caulfield Exhibit 34 - CD labled "Ball Identification and Test Photographs"	105, 401, 402, 602, 702, 802, 805, 901, 902, 1002
578				Raw Data from Testing of Acushnet Balls Produced To Acushnet	105, 401, 402, 602, 702, 802, 805, 901, 902, 1006
579				Test Samples Made Available to Acushnet During the Inspection at Packer Engineering on February 8-9, 2007	<b>105, 106, 402, 901</b>
580		1/16/2007		Opening Expert Report of John Calabria	105, 401, 402, 602, 702, 802, 805, 901, 902
581				Calabria Exhibit 2 - <u>The Golf Ball Book</u> by Udo Machat & Larry Dennis	105, 401, 402, 602, 702, 802, 805, 901, 902
582				Calabria Exhibit 3 - Titleist: Technology & Tradition: Preserving the Balance	105, 401, 402, 602, 702, 802, 805, 901, 902
583				Calabria Exhibit 4 - USGA Championships List of Conforming Golf Balls (Condition: Rules 36-1 and 2-3)	105, 401, 402, 602, 702, 802, 805, 901, 902
584		5/27/2000		Calabria Exhibit 5 - Golf World article by Gene Yasuda re Tiger Woods' experimenting with Nike Golf ball	802, 805, 401, 402, 403, 901, 1002, 602, 702, 902
585		1994		Calabria Exhibit 6 - Articles from Science and Golf II: <u>51 The relationship between golf ball construction and performance by M.J. Sullivan and T.Melvin</u> <u>56 The golf equipment market 1984-1994 by S.K. Proctor</u>	105, 401, 402, 602, 702, 802, 805, 901, 902

586			Calabria Exhibit 7 - Golf Industry White Book (white paper) by Yano Research Institute Ltd. "Ball sales shift with respect to ball species (structures)"	105, 401, 402, 602, 702, 802, 805, 901, 902, 604
587		1/16/2007	<u>Opening Expert Report of John C. Jarosz (including Exhibits 1-40)</u>	Compound, 105, 401, 402, 602, 702, 802, 805, 901, 902
588			<u>Opening Expert Report of Kim Blair</u>	105, 401, 402, 602, 702, 802, 805, 901, 902
589		9/17/2001	Blair Exhibit 1 - High-tech helps sports gear biz keep its swing, By H. Lee Murphy (Technology is helping sell golf and ski products)	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
590		2004	Blair Exhibit 2 - The business of golf technology By A. Chou, Chou Golf Design Labs, Santa Rosa, CA, USA	401, 402, 403, 602, 702, 802, 805, 901, 902
591		11/17/2004	Blair Exhibit 3 - Factiva - Nanotech Golf balls that make hacks look good By Kevin Maney USA Today	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
592		12/18/2005	Blair Exhibit 4 - Going down easy - Technological advancements make latest ski models a joy underfoot By Mike Whitaker	401, 402, 403, 602, 702, 802, 805, 901, 902,
593		12/15/2006	Blair Exhibit 5 - Draft Copy - Materials In Sports Equipment Vol 2 By Kim B. Blair, Ph.D.	401, 402, 403, 602, 702, 802, 805, 901, 902
594		1/6/2007	Blair Exhibit 6 - Aqua Shift: TYR Sport Online Store <a href="http://www.tyr.com/shop/technical-aqua-shift-c-30_31_52_87.html">http://www.tyr.com/shop/technical-aqua-shift-c-30_31_52_87.html</a>	401, 402, 403, 602, 702, 802, 805, 901, 902
595		N/A	Blair Exhibit 7 - Speedo Fastskin - <a href="http://www.speedfastskin.com/">http://www.speedfastskin.com/</a>	401, 402, 403, 602, 702, 802, 805, 901, 902
596		3/31/2000	Blair Exhibit 8 - Design Innovation: Good or Bad For Sports? Radio National's The Sports Factor with Amanda Smith	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
597		1/6/2007	Blair Exhibit 9 - Swim Outlet - Men's Swimwear: Men's Technical Suits <a href="http://www.swimoutlet.com/Mens_Technical_Suits_s/278.htm">http://www.swimoutlet.com/Mens_Technical_Suits_s/278.htm</a>	401, 402, 403, 602, 702, 802, 805, 901, 902

598			1/16/2007	Blair Exhibit 10 - Lance Armstrong's War By Daniel Coyle	401, 402, 403, 602, 702, 802, 805, 901, 902
599			7/17/2006	Blair Exhibit 11 - Bill Tancer - Hitwise US: Does the Tour de France Affect Bike Sales? <a href="http://weblogs.hitwise.com/bill-tancer/2006/07/does_the_tour_de_france_sell_b.html">http://weblogs.hitwise.com/bill-tancer/2006/07/does_the_tour_de_france_sell_b.html</a>	401, 402, 802, 805, 901
600			4/17/1995	Blair Exhibit 12 - Image Repositioning: Techno-Legit at Wilson (Wilson Sporting Goods is in the midst of an image repositing in a bid to re-energize the 81-yr-old firm)	1002, 401, 402, 403, 602, 702, 802, 805, 901, 902
601			2/1/1996	Blair Exhibit 13 - The Aerospace Connection By Joe Skorupa	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
602			7/13/2006	Blair Exhibit 14 - ISEA: International Sports Engineering Association <a href="http://www.sportsengineering.org/">http://www.sportsengineering.org/</a>	401, 402, 403, 602, 702, 802, 805, 901, 902
603				Blair Exhibit 15 - The impact of science and technology on golf equipment - a personal view By A. J. Cochran	401, 402, 403, 602, 702, 802, 805, 901, 902
604		-	5/10/2003	Blair Exhibit 16 - Golf science research at the beginning of the twenty-first century By M.R Farrally, A.J. Cochran, D.J. Crews M.J. Hurdzan, R.J. Price, J.T. Snow and P.R. Thomas	401, 402, 403, 602, 702, 802, 805, 901, 902
605			1/24/2005	Blair Exhibit 17 - Q&A Breaking out from the pack: while overall growth in the golf industry has slowed, this young CEO keeps all facets of his business going strong	401, 402, 403, 602, 702, 802, 805, 901, 902, 1003
606			6/26/1905	Blair Exhibit 18 - Chapter 2 Engineering Methodology in Gulf Studies By Arthur C.P. Chou	401, 402, 403, 602, 702, 802, 805, 901, 902
607				Blair Exhibit 19 - The Rules of Golf APPENDIX III The Ball	401, 402, 403, 602, 702, 802, 805, 901, 902
608				Blair Exhibit 20 - Coefficient of Restitution -- from Eric Weisstein's World of Physics <a href="http://scienceworld.wolfram.com/physics/CoefficientofRestitution.html">http://scienceworld.wolfram.com/physics/CoefficientofRestitution.html</a>	401, 402, 403, 602, 702, 802, 805, 901, 902
609			Sep-01	Blair Exhibit 21 - Materials in Sports Designing for BALL IMPACTS By Gary M. Michal and Mark D. Novak	401, 402, 403, 602, 702, 802, 805, 901, 902, 1003

610		1994	Blair Exhibit 22 - 51 The relationship between golf ball construction and performance By M.J. Sullivan and T. Melvin	401, 402, 403, 602, 702, 802, 805, 901, 902
611		7/18/2005	Blair Exhibit 23 - GOLF BALLS Polymer chemistry has played a key role in the evolution of the golf ball	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
612			Blair Exhibit 24 - Chapter 51 History and Construction of Non-Wound Golf Balls By R.D. Nesbitt, M.J. Sullivan, and T. Melvin Spalding Sports World Wide, Chicopee, MA, USA; Chapter 52 The Curious Persistence of the Wound Ball by Jeffrey L. Dalton Titleist and Foot-Joy Worldwide	401, 402, 403, 602, 702, 802, 805, 901, 902
613		1984-1994	Blair Exhibit 25 - 56 The golf equipment market 1984-1994 By S.K. Proctor Sports Marketing Surveys Ltd, Byfleet Business Centre, Chertsey Road, Byfleet, Surrey, UK	401, 402, 403, 602, 702, 802, 805, 901, 902
614		Nov-88	Blair Exhibit 26 - EQUIPMENT Manufacturers refine their ball designs	401, 402, 403, 602, 702, 802, 805, 901, 902
615			Blair Exhibit 27 - The core of the matter The Business equipment By E. Michael Johnson Golf world Business	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
616		6/15/2000	Blair Exhibit 28 - Rolling clones: Does Your Golf Ball Beep, Tick, Perform Some Special Trick? By James P. Sterba. The Wall Street Journal (Golfer Tiger Woods' decision to switch from using titleist to Nike golf balls is leading to a war in the industry)	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
617		Sep-96	Blair Exhibit 29 - The Coming Golf Ball Wars By Scott Kramer (Club makers set to enter the \$740-mil golf ball market; some fear confused consumers due to too many products)	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
618		9/12/1996	Blair Exhibit 30 - Golf-equipment makers drive price out of sight (Anonymous) Machine Design pg. 20	401, 402, 403, 602, 702, 802, 805, 901, 902
619		May-97	Blair Exhibit 31 - Balls (Table ranks companies by 1996 golf balls sales; 51 mil dozen balls sold in 1996 by Craig Better	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002

620			Jul-04	Blair Exhibit 32 - Making History: From wood to feathers to liquid centers and beyond-the story of the golf ball By Josha Hill <a href="http://www.golfonline.com/golfonline/equipment/features/article/0,17742,653003,00.html">http://www.golfonline.com/golfonline/equipment/features/article/0,17742,653003,00.html</a>	401, 402, 403, 602, 702, 802, 805, 901, 902, 1003
621			1/18/1999	Blair Exhibit 33 - Nike's New Golf Balls Aim Straight up Fairway By Terry Lefton (Nike is supporting its entry into the golf ball market with a television and print advertising campaign; using asn accuracy product positioning	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
622			4/5/1999	Blair Exhibit 34 - RUBBER KEY IN DOZEN GOLF BALL INTRODUCTIONS BY Ryan Van Benthusen	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
623			2/5/2000	Blair Exhibit 35 - Golf Ball Market in Uproar Over New Callaway Entries (Complaints and Challenges at Introduction) By Dennis Blank	401, 402, 403, 602, 702, 802, 805, 901, 902
624			Jun-01	Blair Exhibit 36 - Mortally wound-ed? Hot, new solid-core balls have nearly KO'd their wound-ball rivals By E. Michael Johnson	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
625			8/12/2000	Blair Exhibit 37 - Wound or Solid?	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
626			10/20/1997	Blair Exhibit 51 - Callaway commits to build new facility By Marty Whitford (Callaway Golf Co has committed up to \$100 mil to open a gold ball plant in Carlsbad, Ca)	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
627			3/14/2001	Blair Exhibit 57 - The ball that's turning GOLF upside down Titleist's solid-core Pro V1 is credited for wins, records By Jerry Potter	401, 402, 403, 602, 702, 802, 805, 901, 902
628			6/8/2000	Blair Exhibit 61 - Woods gets industry's attention with ball switch to Nike By Bob Harig	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
629			5/27/2000	Blair Exhibit 62 - Tiger Woods experimented with a Nike Golf ball for the first time in tournament play at the Deutsche Bank SAP Open May 18-21, opening a flood of questions: By Gene Yasuda	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002

630			2/26/2001	Blair Exhibit 65 - Nike: Great Balls Afire: Will Golf Clubs Be Next? (In the year ended 11/00, Nike boosted its share of the \$750 mil golf ball market in the US to 3.9% vs 0.9% after Tiger Woods began using Nike's Tour Accuracy)	401, 402, 403, 602, 702, 802, 805, 901, 902, 1003
631			9/22/2000	Blair Exhibit 66 - Going to great lengths By Tim Rosaforte	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
632			6/11/2001	Blair Exhibit 67 - Driving For Innovation: Labs and links By H. Lee Murphy (The Golf equipment market is involved in as innovation frenzy)	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
633			Aug-01	Blair Exhibit 68 - Right on the seam Equipment Digest By Jaime Diaz (GolfDigest.com Forums)	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
634			8/18/2001	Blair Exhibit 69 - Byline By John Steinbreder	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
635			Feb-02	Blair Exhibit 70 - What's Driving the Jump in Distance? By Frank Thomas	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
636			N/A	Blair Exhibit 71 - Technology in Golf: Past, Present and Future State of the Game Statistics	401, 402, 403, 602, 702, 802, 805, 901, 902
637			Feb-04	Blair Exhibit 72 - The Hot List: Balls Editor' Choice Titleist Pro V1/V1x	401, 402, 403, 602, 702, 802, 805, 901, 902, 1002
638			1/16/2007	Opening Expert Report of Larry C. Cadorniga (including Tabs A-I)	Compound, 401, 402, 403, 602, 702, 802, 805, 901, 902
639				Opening Expert Report of Nick Price	401, 402, 403, 602, 702, 802, 805, 901, 902
640			October 21, 2003	File History for Patent No. 6,635,716	802, 805, 901
641			September 15, 1932	Patent Specification, 377,354 - Correction of Clerical Error	802, 805, 901
642			December 10, 1953	U.S. Patent No. 2,728,576	802, 805, 901
643			December 16, 1997	U.S. Patent No. 5,697,856	802, 805, 901
644			November 9, 1999	U.S. Patent No. 5,980,396	802, 805, 901
645			November 16, 1999	U.S. Patent No. 5,984,807	802, 805, 901



646			March 13, 2001	U.S. Patent No. 6,200,512 B1	802, 805, 901
647			April 3, 2001	U.S. Patent No. 6,210,294 B1	802, 805, 901
648			April 10, 2001	U.S. Patent No. 6,213,892 B1	802, 805, 901
649			June 12, 2001	U.S. Patent No. 6,245,386 B1	802, 805, 901
650			May 21, 2002	U.S. Patent No. 6,390,932 B1	802, 805, 901
651			August 27, 2002	U.S. Patent No. 6,440,346 B1	802, 805, 901
652			August 19, 2003	U.S. Patent No. 6,607,451 B2	802, 805, 901
653			December 16, 2003	U.S. Patent No. 6,663,508 B1	802, 805, 901
654			September 7, 2004	U.S. Patent No. 6,786,837 B2	802, 805, 901
655			November 16, 2004	U.S. Patent No. 6,818,724 B2	802, 805, 901
656			April 25, 2006	U.S. Patent No. 7,033,287 B2	901
657	AB 0039771	AB 0039786	January 30, 2001	U.S. Patent No. 6,180,722 B1	901
658	AB 0039973	AB 0039987	December 19, 2000	U.S. Patent No. 6,162,135	802, 805, 901
659	AB 0039988	AB 0040007	October 15, 2002	U.S. Patent No. 6,465,578 B1	901
660	AB 0040008	AB 0040027	November 26, 2002	U.S. Patent No. 6,486,261 B1	901
661	AB 0043740	AB 0043856	November 26, 2002	File History for Patent No. 6,488,261	802, 805, 901
662	AB 0052958	AB 0052607	September 28, 2004	U.S. Patent No. 6,796,912 B2	802, 805, 901
663	AB 0086458	AB 0086527	August 20, 1976	File History for Serial No. 716,100	802, 805, 901
664	AB 0086528	AB 0086602	November 5, 1979	File History for Serial No. 091,087	802, 805, 901
665	AB 0087437	AB 0087485	July 18, 1977	File History for Serial No. 816,882	802, 805, 901
666	AB 0087486	AB 0087592	June 29, 1978	File History for Serial No. 920396	802, 805, 901
667	BSP 094601	BSP 095344		File History for Serial No. 06213056	802, 805, 901
668	BSP094601	BSP095344		File History for Patent No. 4,936,587	802, 805, 901
669	BSP095345	BSP095855	March 8, 1988	File History for Patent No. 4,729,861	901
670	BSP096173	BSP096407	March 22, 1999	File History for Application No. 09/274,015	802, 805, 901
671	BSP096408	BSP096486	April 3, 2002	File History for Patent No. 6,210,294	802, 805, 901
672	BSP096590	BSP096768	October 15, 2002	File History for Patent No. 6,465,578	802, 805, 901
673	BSP097053	BSP097232	September 27, 2002	File History for Application No. 10/256,011	802, 805, 901



674	BSP097977	BSP098058	March 20, 1972	File History for Serial No. 236,318	802, 805, 901
675	BSP098059	BSP098221	May 24, 1973	File History for Serial No. 363,353	802, 805, 901
676	BSP098222	BSP098279	December 24, 1998	File History for Application No. 60/113,949	802, 805, 901
677	BSP098856	BSP096094	January 14, 1992	File History for Patent No. 5,080,367	802, 805, 901
678	SB 08041	SB 08069	May 23, 2002	Facsimile from J. Mulgrew to United States Patent and Trademark Office forwarding Petition for Extension of Time, Response to Office Action, Declaration of L. Bissonnette and Fee Transmittal	802, 805, 901, 401, 402, 403
679				U.S. Patent No. 6,635,716	802, 805, 901
680				United States Patent No. 5,948,862	802, 805, 901
681	AB 27524	AB 29405		Acushnet Purchased Material Specifications	Compound, 802, 805
682	AB 0113396	AB 0113404	November 18, 2004	Pro V1 392 - Physical Matrix - SPC Code : 3V	
683	AB 24588			Acushnet QAS/SPC Information on CD	
684	AB 0011057	AB 0011178	August 16, 1972	Francis S. Lynch Design and Computation Book	
685	AB 0011179	AB 0011379	August 30, 1972	Francis S. Lynch Design and Computation Book	
686	AB 0011380	AB 0011515	August 17, 1976	Francis S. Lynch Design and Computation Book	
687	AB 0011516	AB 0011616	July 31, 1978	Francis S. Lynch Design and Computation Book	
688	AB 0012450	AB 13144		Chris Cavallaro Notebooks	Compound, 802, 805, 401, 402
689	AB 0016037	AB 0016124	October 31, 2000	Peter Voorheis Design and Computation Book	Compound, 802, 805, 401, 402
690	AB 0016125	AB 16198		Chris Cavallaro Notebooks	802, 805, 401, 402
691	AB 0016199	AB 16219		Mike Jordan File/Notebook on NXT and Pro V1	802, 805, 401, 402
692	AB 0016220	AB 16296		Derek Ladd Core Research Notebooks	802, 805, 401, 402
693	AB 0016297	AB 0016374	May 17, 2002	P. Voorheis Design and Computation Book	802, 805, 401, 402
694	AB 0016375	AB 0016456		Derek Ladd Core Research Notebooks	802, 805, 401, 402
695	AB 0016457	AB 0016552		P. Voorheis Research Notebook re: Core Materials	802, 805, 401, 402
696	AB 0016586		July 18, 2001	P. Voorheis Design and Computation Book	802, 805, 401, 402
	AB 0016622	AB 0016625			

697	AB 0035196	AB 35658		P. Puniello's RPIM Notebooks	Compound, 802, 805, 401, 402
698	AB 0036538	AB 37027		Vortheis Notebooks	Compound, 802, 805, 401, 402
699	AB 0037028	AB 0037256	September 13, 2000	Veneer Vol. I Notebook	Compound, 802, 804, 401, 402
700	AB 0037257	AB 0037523		Veneer Vol. II Notebook	Compound, 802, 805, 401, 402
701	AB 0037524	AB 0037706		Veneer Vol. III Notebook	Compound, 802, 805, 401, 402
702	AB 0037707	AB 0037935		Veneer Vol. IV Notebook	Compound, 802, 805, 401, 402
703	AB 0037936	AB 0038022		Veneer Vol. V Notebook	Compound, 802, 805, 401, 402
704	AB 0038023	AB 0038207		Vortheis Notebooks	Compound, 802, 805, 401, 402
705	AB 0044882	AB 0044978	January 27, 1999	D. Ladd Design and Computation Book	Compound, 802, 805, 401, 402
706	AB 0044882	AB 0044978		Vortheis Notebooks	Compound, 802, 805, 401, 402.
707	AB 0044979	AB 0045134	July 24, 1998	D. Ladd Design and Computation Book	Compound, 802, 805, 401, 402
708	AB 0045135	AB0045302	November 19, 1997	D. Ladd Design and Computation Book	Compound, 802, 805, 401, 402
709	AB 0051196	AB 0051318		NXT Replacement Notebook	Compound, 802, 805, 401, 402
710	AB 0087796	AB 0087820	March 10, 1970	F. Lynch Research Notebook	802, 805, 105
711	AB 0004672	AB 0004682		Testing information	802, 805
712	AB 0015263	AB 0015263	May 14, 1997	How To Weigh Balls	802, 805
713	AB 0015264	AB 0015266	January 17, 2001	How To Check The DCM For Proper Calibration	802, 805
714	AB 0015270	AB 0015271	March 8, 2001	How to Calibrate the 5-Way Sizer	802, 805

715	AB 0015618	AB 0015635	February 26, 2001	BPIII Inner Components - How to Check the Calibration of the Core Scale	802, 805, 401, 402
716	AB 0022937	AB 0023118		Description of Tests	802, 805, 401, 402
717			July 5, 2006	USGA - Conforming Golf Balls - List	802, 805
718	AB 53357	AB 53411		USGA Specifications	802, 805
719				Complaint -- Bridgestone v. Acushnet lawsuit	
720				Reply -- Bridgestone v. Acushnet lawsuit	105
721				Reply -- Bridgestone v. Acushnet lawsuit	Duplicate

722	AB 35813; AB 38318 - AB 38323; AB 38328 - AB 38339; AB 38362 - AB 38367; AB 38393- 96; AB 45375 - AB 45377; AB 45381; AB 46692 - AB 46701; AB 46930 - AB 46932; AB 46943 - AB 46948; AB 50840 - AB 50843; AB 51405 - AB 51406; AB 58729 - AB 58730			Pro V1 Platform Team Meeting Minutes	Compound, 802, 805, 401, 402, 403
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723	AB 4780-84; AB 50838-839; AB 35673-74; AB 35670-71; AB 35964; AB 45358-60; AB 45362-63; AB 52228-30; AB 51342-43; AB 35971			NXT Platform Team Meeting Minutes	Compound, 802, 805, 401, 402, 403
724	35748-35749; 36044-45; 35960-961; 35965-68; 35931-32; 35934-35; 35869-72; 35864-36; AB 45381; 35810-12; 35813; 71211-12; 71216-20; 36247-49			NXT & DT Platform Team Meeting Minutes	Compound, 802, 805, 401, 402, 403

725	AB 0050764	AB 0050768		Product Development & Aero Update	802, 805, 401, 402, 403
726	AB 0050849- 853; AB 0058663; AB 0058718-19; AB 0058725-26; AB 0058743-44; AB 0058905-06; AB 0058907-08; AB 8430-32			Pinnacle Meeting Minutes	Compound, 802, 805, 401, 402, 403

727	AB 0034813-14; AB 0036266-69; AB 0036301- 306; AB 0036431-33; AB 0036447-49; AB 0036460-62; AB 0038393-96; AB 0038425-28; AB 0038462-64; AB 0038471-73; AB 0038478- 480; AB 0038490-92; AB 0038501-02; AB 0038503-04			New Product Process Meeting Minutes	Compound, 802, 805, 401, 402, 403
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728	AB 34588; AB 50769 - AB 50771; AB 50902 - AB 50914; AB 51055 - AB 51090; AB 51093 - AB 51150; AB 51323 - AB 51326; AB 51328 - AB 51332; AB 51335 - AB 51341; AB 51344 - AB 51347; AB 60894 - AB 60896			Product Development and Aero Meeting	Compound, 802, 805, 401, 402, 403
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729	AB 875 - AB 1046; AB 4712 - AB 04714; AB 4761 - AB 4764; AB 11621 - AB 11647; AB 12271 - AB 12379; AB 17253 - AB 17275; AB 17299 - AB 17300;			Pro V1 Platform Team Meeting Minutes	Compound, 802, 805, 401, 402, 403
730	AB 17575 - AB 17629; AB 17642 - AB 17676; AB 17687 - AB 17688; AB 34683 - AB 34690; AB 34698 - AB 34703; AB 34709; AB 34756 - AB 34765			Pro V1 Platform Team Meeting Minutes	Compound, 802, 805, 401, 402, 403
731	BSP 089049	BSP 089094		Powerpoint Present	401, 402, 408, 802, 805
732	BSP 059000	BSP 059004		Emails on patent dispute	401, 402, 408, 802, 805

733	BSP 089013	BSP 089290			Compound, 401, 402, 403, 408, 802, 805
734	AB 000780	AB 000781			
735	BSP 036215	BSP 036229			<b>Compound, 105, 401, 402, 403, 408, 802, 805</b>
736			February 20, 2007	Expert Report of Larry C. Cadorniga	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
737				Cadorniga Exhibit A - Curriculum Vitae of Larry C. Cadorniga	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
738			May 16, 2007	Cadorniga Exhibit B - Letter from John M. Spitzer to Larry Cadorniga	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
739			February 20, 2007	Expert Report of John Calabria	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
740				Calabria Appendix A - '852 Patent	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
741				Calabria Appendix B - '817 Patent	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
742				Calabria Appendix C - '707 Patent	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
743				Calabria Appendix D - '834 Patent	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
744				Calabria Appendix E - '791 Patent	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
745				Calabria Exhibit 1 - Curriculum Vitae	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
746				Calabria Exhibit 2 - DuPont publication - Surlyn, Increases Packaging Efficiency and Package Performance	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
747				Calabria Exhibit 3 - File History for Patent No. 4,431,193	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
748				Calabria Exhibit 4 - U.S. Patent No. 6,386,922 B1	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
749				Calabria Exhibit 5 - U.S. Patent No. 5,832,889	105, 401, 402, 403, 602,

					702, 802, 805, 901, 902
750				Calabria Exhibit 6 - other Acushnet patents which indicate the layers of US. '193 can be foamed	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
751				Calabria Exhibit 7 - Patents to Spalding which discuss US '193	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
752				Calabria Exhibit 8 - Chart re: 1993-1995 PGA Ball (Bridgestone and Wilson Models) (Bridgestone Newing, Bridgestone Precept, Wilson Ultra and all Variants); Chart re: 1996-1999 PGA Ball (Bridgestone and Wilson Models)(Bridgestone Newing, Bridgestone Precep	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
753			February 20, 2007	Expert Report of Edward M. Caulfield/Kevin Jones	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
754				Caulfield Exhibit 36 - Standard Test Methods for Vulcanized Rubber and Thermoplastic Elastomers - Tension	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
755				Caulfield Exhibit 37 - <i>Science and Golf IV</i>	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
756				Caulfield Exhibit 38 - Kenneth M. Ralls, Thomas H. Courtney and John Wulff, <u>Introduction to Materials Science and Engineering</u>	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
757				Caulfield Exhibit 39 - Richard W. Hertzberg, <u>Deformation and Fracture Mechanics of Engineering Materials</u>	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
758				Caulfield Exhibit 40 - Figure 1 - Deformation Rate Comparison, Load vs Distortion for 100 kg Compression test (Taylor Made - TP Black Test Core)	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
759			April 19, 2006	Caulfield Exhibit 41 - Steve Quintavalla, <u>Do Long Hitters Get An Unfair Benefit?</u>	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
760				Caulfield Exhibit 42 - Steven J. Quintavalla, Ph.D., <u>Experimental Determination of The Effects of Clubhead Speed on Driver Launch Conditions and The Effects on Drive Distance For Balls Uded By The PGA Tour</u>	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
761				Caulfield Exhibit 43 - <u>Equipment Primer</u> , United States Golf Association	105, 401, 402, 403, 602, 702, 802, 805, 901, 902

762			February 20, 2007	Expert Reports of Dr. E. Bryan Coughlin	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
763				Coughlin Exhibit A - <u>Standard Test Method for Rubber Property - Durometer Hardness</u>	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
764			February 20, 2007	Expert Reports of Avraam Isayev	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
765				Isayev Exhibit A - Measure Loss Tangents and Calculate Resilience Index of Golf Ball B330 Areas	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
766				Isayev Exhibit B - Measure Loss Tangents and Resilience Index of Sample AD703	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
767				Isayev Exhibit C - Measure Loss Tangents and Resilience Index of Cured Sample AD703	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
768			February 20, 2007	Expert Report of Rabi Mehta	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
769				Mehta Exhibit A - Resume	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
770				Mehta Exhibit B - Materials & Depositions Considered	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
771				Mehta Exhibit C - Instructions for the Dimple Spacing Analysis Spreadsheet Tool	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
772				Mehta Exhibit D - B330 Dimple Layout	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
773				Mehta Exhibit E - Print outs of all spreadsheets used for Table 6 - (B330)	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
774				Mehta Exhibit F - Print outs of all spreadsheets used for Table 6 - (Laddie)	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
775				Mehta Exhibit G - Print outs of all spreadsheets used for Table 6 - (U-Tri Tour)	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
776			February 20, 2007	Expert Report of Edward M. Caulfield	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
777				Caulfield Exhibit 44 - Excerpts from Robert C. Weast, Ph.D., <i>Handbook of Chemistry and Physics</i>	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
778				Caulfield Exhibit 45 - Table XIV, Golf Ball Identification	105, 401, 402, 403, 602,

779				Caulfield Exhibit 46 - Table XV, Specific Gravity Results, Wilson Ultra Tour Balata	702, 802, 805, 901, 902
780				Caulfield Exhibit 47 - Table XVI, Cover and Intermediate Layer Thickness Results, Wilson Ultra Tour Balata	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
781				Caulfield Exhibit 48 - Table XVII, Cover Layer Hardness Results, Wilson Ultra Tour Balata	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
782				Caulfield Exhibit 49 - Table XVIII, Intermediate Layer Hardness Results, Wilson Ultra Tour Balata	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
783				Caulfield Exhibit 50 - Table XIX, Core Surface Hardness Results, Wilson Ultra Tour Balata	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
784				Caulfield Exhibit 51 - Table XX, Compression - Distortion Under 100 kg Load Results, Acushnet '673 Reference Balls	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
785				Caulfield Exhibit 52 - Table XXI, Cover Hardness (Shore D) Results, Acushnet '673 Reference Balls	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
786				Caulfield Exhibit 53 - Table XXII, Ball Diameter Measurement Results, Acushnet '673 Reference Balls	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
787				Caulfield Exhibit 54 - Table XXIII, Weight Measurement Results, Acushnet '673 Reference Balls	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
788				Caulfield Exhibit 55 - Table XXIV, Cover Layer Thickness Results, Bridgestone Precept EV Extra Spin	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
789				Caulfield Exhibit 56 - Table XXV, Distance From Core Perimeter to Hardness Impression, Bridgestone Precept EV Extra Spin	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
790				Caulfield Exhibit 57 - Table XXVI, Distance From Core Perimeter to Hardness Impression, Wilson Ultra Competition 90	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
791				Caulfield Exhibit 58 - Table XXVII, Core Hardness Results, Bridgestone Cores	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
792				Caulfield Exhibit 59 - Table XXVIII, Specific Gravity Results, Bridgestone Cores	105, 401, 402, 403, 602, 702, 802, 805, 901, 902

793				Caulfield Exhibit 60 - Table XXIX, Core Diameter Results, Bridgestone Cores	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
794				Caulfield Exhibit 61 - CD from Packer Engineering regarding Inspection at Packer Engineering on Feb. 8 and 9, 2007	105, 401, 402, 403, 602, 702, 802, 805, 901, 902
795	AB 24283			Trigonox Certificate of Analysis	105, 802, 805, 901, 902
796	AB 4836			Bill Morgan E-mail	105, 802, 805
797				File History for Application Serial Number 11/111,974 (Reissue Application for '852 Patent)	105, 802, 805, 901
798	WSG 00001	WSG 00461		Documents produced by Wilson Sporting Goods in response to Subpoena	Compound, Duplicate, 402, 403, 802, 805, 901, 902, 105, 1006
799				Ultra Tour Balata 90 Box Photo from Calabria Report	105, 401, 402, 602, 702, 802, 805, 901, 902, 1002
800	AB 17575			Email regarding IML adhesion problem	802, 805, 402
801				U.S. Patent No. 4,526,375	105, 802, 805, 901, 1002
802				U.S. Patent No. 4,570,937	105, 802, 805, 901, 1002
803				U.S. Patent No. 4,681,323	105, 802, 805, 901, 1002
804				U.S. Patent No. 4,840,381	105, 802, 805, 901, 1002
805				U.S. Patent No. 4,863,167	105, 802, 805, 901, 1002
806				U.S. Patent No. 4,929,678	105, 802, 805, 901, 1002
807				U.S. Patent No. 4,968,038	105, 802, 805, 901, 1002
808				U.S. Patent No. 5,009,428	105, 802, 805, 901, 1002
809				U.S. Patent No. 5,019,320	105, 802, 805, 901, 1002
810				U.S. Patent No. 5,024,444	105, 802, 805, 901, 1002
811				U.S. Patent No. 5,033,750	105, 802, 805, 901, 1002
812				U.S. Patent No. 5,048,838	105, 802, 805, 901, 1002
813				U.S. Patent No. 5,087,049	105, 802, 805, 901, 1002
814	D.I. 346			Bridgestone's Opening Brief in Support re of Its Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 6,818,705	105, 401, 402, 403, 602, 802, 805, 1002

815	D.I. 350			Bridgestone's Opening Brief in Support of Its Motion for Summary Judgment of No Invalidity of U.S. Patent No. 6,679,791	105, 401, 402, 403, 602, 802, 805, 1002
816	D.I. 352			Bridgestone's Opening Brief in Support of Its Motion for Summary Judgment of No Invalidity of U.S. Patent No. 5,743,817	105, 401, 402, 403, 602, 802, 805, 1002
817	D.I. 348			Bridgestone's Opening Brief in Support of Its Motion for Summary Judgment of No Invalidity of U.S. Patent No. 5,782,707	105, 401, 402, 403, 602, 802, 805, 1002
818	BSP 44662-63			Bridgetone golf ball documents	105, 402, 602, 604, 802, 805, 901, 902
819				February 13, 2007 letter, Stasio to White	402, 403
820	D.I. 356			Bridgestone's Opening Brief in Support of Its Motion for Summary Judgment That the "Wilson Ultra Tour Balata 90" Golf Balls, the "1993 Wilson Ultra Competition 90" Golf Balls and the "1996 Precept EV Extra Spin" Golf Balls Are Not Prior Art	105, 401, 402, 403, 602, 802, 805, 1002
821	D.I. 474			Reply Brief in Support of Motion for Summary Judgment of No Invalidity of U.S. Patent No. 5,743,817	105, 401, 402, 403, 602, 802, 805, 1002
822	D.I. 475			Reply Brief in Support of Motion for Summary Judgment of No Invalidity of U.S. Patent No. 5,782,707	105, 401, 402, 403, 602, 802, 805, 1002
823	D.I. 477			Reply Brief in Support of Motion for Summary Judgment of No Invalidity of U.S. Patent No. 6,679,791	105, 401, 402, 403, 602, 802, 805, 1002
824	D.I. 478			Reply Brief in Support of Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 6,818,705	105, 401, 402, 403, 602, 802, 805, 1002
825	D.I. 479			Reply Brief in Support of Motion for Summary Judgment That the "Wilson Ultra Tour Balata 90" Golf Balls, the "1993 Wilson Ultra Competition 90" Golf Balls and the "1996 Precept EV Extra Spin" Golf Balls Are Not Prior Art	105, 401, 402, 403, 602, 802, 805, 1002

826	D.I. 489			Reply Brief re: Emergency Motion to Amend/Correct Invalidity Expert Reports And To Reset Pretrial and Trial Dates in Light of the Supreme Court's Decision in KSR Int'l Co. v. Teleflex Inc	105, 401, 402, 403, 602, 802, 805, 1002
827	AB 0004466	AB 0004467		Competitive Ball Log for Wilson Ultra Competition 90 Ball	105, 401, 402, 403, 802, 805
828	AB 0004468	AB 0004476		Competitive Ball Log for Wilson Ultra Tour Balata	105, 401, 402, 403, 802, 805
829	AB 0004601	AB 0004618		Competitive Ball Log for Precept EV Extra Spin	105, 401, 402, 403, 802, 805